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RECORDED AT REQUEST OF
AND WHEN RECORDED RETURN TO:
City of Lake Forest
25550 Commercentre Drive
Lake Forest, California 92630
Attn: City Manager

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder
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Fee Exempt - Gov't Code §6103
(Space above for Recorder's Use)

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DEVELOPMENT AGREEMENT

between

THE CITY OF LAKE FOREST,
a California municipal corporation

and

SHEA/BAKER RANCH ASSOCIATES, LLC,
a California limited liability company

Dated as of October 20, **2010, for reference purposes only**

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THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered by and between THE CITY OF LAKE FOREST, a California municipal corporation ("City"), and SHEA/BAKER RANCH ASSOCIATES, LLC, a California limited liability company ("Owner"). This Agreement is entered into with reference to the following facts:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the "Development Agreement Statute," Sections 65864 et seq., of the California Government Code. City, a general law city, is authorized by the Development Agreement Statute to enter into development agreements with persons and entities having legal or equitable interests in real property for the purpose of establishing predictability for both City and the property owner in the development process. Owner has requested that City enter into a development agreement for the development of the Property, as defined below. City enters into this Agreement pursuant to the provisions of the California Government Code, the City's General Plan (the "General Plan"), the Lake Forest Municipal Code (the "City's Municipal Code"), and applicable City policies.

B. Owner has a legal or equitable interest in that certain real property consisting of approximately 386 acres of land located in the City of Lake Forest, County of Orange, State of California, more particularly described in Exhibit A (the "Property"). Owner desires to develop the Property primarily with residential uses, but also with the potential for retail, commercial, school, government, and park uses.

C. In recognition of changes in the City and County generally since much of the land now contained within the City was planned for development, the City identified for study an area consisting of approximately 956 acres of undeveloped land, including the Property, within both the City and the 65 dB CNEL Noise Contour depicted in the Airport Environs Land Use Plan line as it existed prior to 2005, all as illustrated in Exhibit "A" to Lake Forest Resolution No. 2003-17 (the "Greater OSA Boundaries"). Subsequently, the City commissioned an "Opportunities Study" to identify uses within the Greater OSA Boundaries which would better serve the needs of the community than would the then-permitted uses. As a result of the Opportunities Study, the City identified an 838-acre portion within the Greater OSA Boundaries for which it prepared and approved a general plan amendment on July 1, 2008 (the "OSA GPA"). This 838-acre area is identified within this Agreement as the "Opportunities Study Area." The OSA GPA established new uses within the Opportunities Study Area. Although the OSA GPA, when approved, included the Property, the portion of the OSA GPA applicable to the Property never became effective.

D. Therefore, on July 6, 2010, the City approved an amendment to the General Plan for the Property which established new uses within the Property (the "General Plan Amendment").

E. Owner participated in the Opportunities Study and desires to develop the Property in a manner consistent with the uses identified for the Property in the General Plan Amendment.

F. The Parties desire to enter into this Agreement in order to permit some uses on the Property that were not permitted under the General Plan prior to the effective date of the General Plan Amendment. These uses may create needs for different infrastructure and public facilities and services than were anticipated and required in the Original City Agreement.

G. This Agreement is intended to ensure that Owner has provided the Project's share of funding sufficient to provide the adequate and appropriate infrastructure and public facilities required by the development of the Property, and that this infrastructure and these public facilities will be available no later than when required to adequately serve demand generated by development of the Property.

H. This Agreement also assures that development of the Property may occur in accordance with City's General Plan, as amended by the General Plan Amendment, and the Development Plan,[1] all as provided in this Agreement.

I. This Agreement constitutes a current exercise of City's police powers to provide predictability to Owner in the development approval process by vesting the permitted use(s), density, intensity of use, and timing and phasing of development consistent with the Development Plan in exchange for Owner's commitment to provide significant public benefits to City (the "Public Benefits") as defined in Section 5.103 and discussed in Section 9 and Exhibit B.

J. The provision by Owner of the Public Benefits allows the City to realize significant economic, recreational, park, open space, educational, social, and public facilities benefits. The Public Benefits will advance the interests and meet the needs of Lake Forest's residents and visitors to a significantly greater extent than would development of the Property under the General Plan in effect at the time of the adoption of the General Plan Amendment.

K. The phasing, timing, and development of public infrastructure necessitate a significant commitment of resources, planning, and effort by Owner for the public facilities financing, construction, and dedication to be successfully completed. In return for Owner's participation and commitment to these significant contributions of private resources for public purposes, City is willing to exercise its authority to enter into this Agreement and to make a commitment of predictability for the development process for the Property. Absent City's willingness to make such a commitment, Owner would be unwilling to enter into this Agreement or make the significant investment of resources required for the planning, financing, construction, and dedication of the public facilities and infrastructure identified in this Agreement. The development of the Property, along with other properties within the Opportunities Study Area, will be necessary to generate the funding required for the public infrastructure.

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[1] The "Development Plan" Is defined in Section 5.46 below.

AGREEMENT

City and Owner agree as follows:

1. INTEREST OF OWNER. Owner represents that it has a legal or equitable interest in the Property and is authorized to enter into this Agreement.

2. PUBLIC HEARINGS. On July 6, 2010, after providing notice as required by law, the City Council of the City (the "City Council") held a public hearing on this Agreement and made the findings set forth in Section 3.

3. CITY COUNCIL FINDINGS. The City Council finds that:

   3.1 This Agreement shall be effective only if the General Plan Amendment becomes effective. Therefore, as of the Effective Date, this Agreement will be consistent with the City's General Plan.

   3.2 This Agreement ensures a desirable and functional community environment, provides effective and efficient development of public facilities, infrastructure, and services appropriate for the development of the Property as set forth in the Development Plan (the "Project"), enhances effective utilization of resources within the City, provides assurances to Owner in an effort to attempt to mitigate the cost of housing and development to the consumer, and provides other significant benefits to the City and its residents.

   3.3 This Agreement provides public benefits beyond those which are necessary to mitigate the development of the Project.

   3.4 This Agreement strengthens the public planning process, encourages private participation in comprehensive planning, particularly with respect to the implementation of the City's General Plan, and reduces the economic costs of development and government.

   3.5 The best interests of the citizens of the City and the public health, safety, and welfare will be served by entering into this Agreement.

4. CONTINUING OBLIGATIONS. This Agreement binds the City now and in the future. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by the City staff and the City Council and have been found to be fair, just, and reasonable. City has concluded that the Project will serve the best interests of its citizens and that the public health, safety, and welfare will be best served by entering into this Agreement.

5. DEFINITIONS. In this Agreement, the following terms and phrases shall have the following meanings (please note that, in some instances, the definition of a word or

phrase may reference capitalized terms which are defined elsewhere within this Section 5):

5.1 "'A' Map" means a Final Map which is approved and recorded for financing and/or conveyance purposes only. An 'A' Map is approved by the City Council as a ministerial action for all or a portion of the First Tentative Map or of any tentative map amending or modifying all or a portion of the First Tentative Map.

5.2 "Acceleration Cost" means the estimated increase in costs that Owner will incur as the result of the construction of City Alton in advance of the Ordinary Course of Owner's Development.

5.3 "Affordable Site" means land within the Property which may be potentially dedicated by Owner to the City for use by the City solely for the development of Affordable Units, all pursuant to Section 8.23 below.

5.4 "Affordable Unit" means a Residential Unit that is located within the City and is affordable to Moderate Income, Low Income, or Very Low Income Households, as those terms are defined in the Affordable Housing Implementation Plan attached as Exhibit C.

5.5 "Agreed Acceleration Cost" is the negotiated stipulated amount that the Parties have agreed in good faith will serve as the Acceleration Cost for purposes of this Agreement.

5.6 "Agreement" means this Development Agreement between the City and Owner. The term "Agreement" shall include any amendment properly approved and executed pursuant to Section 7.5.

5.7 "AHIP" means the Affordable Housing Implementation Plan attached as Exhibit C.

5.8 "Alternative Onsite Sports Park Sites" means one of the two potential Final Sports Park Sites which are located within the Property and identified on Attachment 1a to Exhibit B.

5.9 "Alton Construction Process" means the process by which City Alton and the Alton Remainder will be constructed.

5.10 "Alton Design Process" means that portion of the Alton Construction Process which consists of the complete planning and design processes for both City Alton and the Alton Remainder.

5.11 "Alton IOD" means the irrevocable offer of dedication of the right-of-way for the Alton Segment to be made by Owner pursuant to Paragraph E2j in Exhibit B. The Alton IOD boundaries are depicted in Attachment 10 to Exhibit B.

5.12 "Alton Phase 1" means the construction of that portion of the Alton Segment running from Commercentre Drive to South Loop Road. Alton Phase 1 is graphically depicted in Attachment 13 to Exhibit B.

5.13 "Alton Phase 2" means the construction of that portion of the Alton Segment running from South Loop Road to the existing (as of the Approval Date) terminus of Alton Parkway at Towne Centre Drive. Alton Phase 2 is graphically depicted in Attachment 13 to Exhibit B.

5.14 "Alton Remainder" means the remaining portions of the Alton Segment after completion of City Alton.

5.15 "Alton Segment" is that portion of the future alignment of Alton Parkway which is located on the Property between Commercentre Drive and the existing (as of the Approval Date) terminus of Alton Parkway at Towne Centre Drive. The Alton Segment is graphically depicted in Attachment 7 to Exhibit B. The Alton Segment consists of a six lane major arterial fully developed, including improvements, as shown in the cross-section in Attachment 7 to Exhibit B.

5.16 "Alton Storm Drain" means the permanent storm drain system to be constructed adjacent to or within the general alignment of the Alton Segment.

5.17 "Approval Date" means the date on which the City Council conducted the first reading of the ordinance adopting this Agreement. That date is July 6, 2010.

5.18 "Area Plan" means an area plan (as defined in Section 9.184.020 of the City's Municipal Code) for the Project and any amendments to that area plan. An application for an Area Plan shall be submitted as part of the First Tentative Map Submittal Package and shall include the following plans: Master Land Use Plan, Circulation Plan, Grading Concept Plan, Landscape Concept Plan, Open Space Plan, Fuel Modification Plan, Maintenance Responsibilities Plan, Drainage Master Plan, Sewer Master Plan, Water Distribution Master Plan, Development Phasing Plan, Public Facilities Phasing and Financing Plan, Private Recreational Facilities Plan, Design Plan, Dry Utilities Plan, and Housing Plan (consistent with Section 8.23 below).

5.19 "Assignment and Assumption Agreement" means the agreement described in Section 13.3 which must be executed by a purchaser, transferee, or assignee (an "Assignee) of some or all of the Property ("Transferred Property") under which the Assignee expressly and unconditionally assumes all duties and obligations of Owner under this Agreement remaining to be performed with respect to the Transferred Property at the time of the purchase, transfer, or assignment, and, when applicable, specifies the amount of Owner's City Facilities Fee Credits transferred to the Assignee. A form Assignment and Assumption Agreement is attached as Exhibit D.

5.20 "Attachment" means an attachment to an Exhibit, unless otherwise stated. The use of the word "Attachment," rather than the word "Exhibit," is simply meant to distinguish between "exhibits" to the main body of this Agreement (which will be called "Exhibits") and "exhibits" to an Exhibit (which will be called "Attachments").

5.21 "'B' Map" means a Final Map approved by the City as a ministerial action which will be filed and recorded to either (a) subdivide all or a portion of the First Tentative Map or (b) resubdivide any portion of the Property previously subject to an 'A' Map or a previously approved 'B' Map.

5.22 "Baker Notice" means the notice provided by Owner to City pursuant to Paragraph B2b of Exhibit B stating that Owner intends to make or cause to be made an irrevocable offer of dedication to the City of the Baker Rancho Parkway Site, rather than of an Onsite Sports Park Site.

5.23 "Baker Notice Terms" means the terms upon which Owner would offer to dedicate or cause to be dedicated the Baker Rancho Parkway Site to the City.

5.24 "Baker Rancho Parkway Site" means the potential Final Sports Park Site depicted in Attachment 1b to Exhibit B.

5.25 "Borrego Condition" means a requirement imposed by any Resource Agency or the Orange County Flood Control District which effectively makes completion of some or all of City Alton subject to the prior or concurrent completion of some or all of the Borrego Improvements.

5.26 "Borrego Improvements" means those improvements to the Borrego Canyon Wash within the Property (as well as offsite improvements that are incidental to and necessary for the completion of those improvements within the Property) which are necessary to protect the Project from the effects of erosion of the Borrego Canyon Wash, as well as measures required by Resource Agencies and the Orange County Flood Control District to address the impacts of those improvements on their respective areas of jurisdiction. The Borrego Improvements include, among other improvements, a box culvert as depicted in Attachment 14 of Exhibit B, entitled "Borrego Improvements Area."

5.27 "Bridge Option" means the City's option under Paragraph E2f of Exhibit B to grant permission to Owner to construct temporary bridges rather than permit closure of portions of the Alton Segment in order to enhance local traffic circulation during Owner's grading and construction activities.

5.28 "CEQA" means the California Environmental Quality Act, codified at California Public Resources Code Sections 21000-21178.

5.29 "City" means the City of Lake Forest, a California municipal corporation.

5.30 "City Alton" means that portion of the Alton Segment to be constructed earlier than the complete Alton Segment would be constructed in the Ordinary Course of Owner's Development. City Alton is described and graphically depicted in Attachment 8 to Exhibit B. In general, City Alton shall include, among other features described in Attachment 8, grading of the City Alton road prism to the ultimate full width of the Alton Segment, a four lane alignment, a permanent median from Commercentre Drive to Town Centre, and left turn pockets to accommodate future development of the Project. City Alton also includes grading and the installation of utilities and other infrastructure improvements as shown on Attachment 8, entitled "City Alton Improvements."

5.31 "City Council" means the governing body of the City.

5.32 "City Facilities" means the Sports Park, Community Center, and City Hall, as defined below.

5.33 "City Facilities Fees" means the per Unit fees to be paid to the City by Owner to satisfy Owner's contributions toward the development of the City Facilities, as set forth in Paragraph B1 of Exhibit B.

5.34 "City Facilities Fee Credit" means any fee credit granted to Owner in this Agreement which may be applied against Owner's obligation to pay the City Facilities Fee.

5.35 "City Hall" means a place of business for the City to conduct its governmental functions to be located somewhere within the OSA boundaries.

5.36 "City's Municipal Code" means the Lake Forest Municipal Code. However, changes to the Municipal Code occurring between the Approval Date and the Effective Date shall not be considered part of the City's Municipal Code for purposes of this Agreement without Owner's prior written consent.

5.37 "Community Center" means one or more buildings at one or more locations within the OSA boundaries which will serve as new gathering place(s) for community business, social, recreational, and other activities.

5.38 "Conditionally Vested Market Rate Apartments" means Market Rate Apartments built pursuant to Paragraph E2u(ii) of Exhibit B.

5.39 "County" means the County of Orange, California.

5.40 "Day" means a calendar day unless specifically stated as a "business day."

5.41 "Default" means a Major Default or Minor Default as defined below.

5.42 "Delivery Deadline" means the date on which the three hundred first (301st) residential building permit for the Project is issued, plus any extensions of the Delivery Deadline provided by this Agreement.

5.43 "Development" means the improvement of the Property to the full extent permitted by the Development Plan for the purposes of completing the structures, improvements, and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public and private facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; the installation of landscaping; and other improvements.

5.44 "Development Approvals" means all permits, certificates, approvals, and other entitlements approved or issued by the City for construction, use, occupancy, and/or development (including marketing and sales of land or structures by Owner) of or on the Property. For the purposes of this Agreement, Development Approvals shall be deemed to include, but are not limited to, the following actions, including revisions, addenda, amendments, and modifications to these actions:

tentative and final subdivision and parcel maps;

conditional use permits, use permits and site development permits;

Area Plans;

grading and building plans and permits;

certificates of compliance and/or lot line adjustments;

improvement plans and permits, including, but not limited to, those related to street, drainage, utility, stormwater, water quality management, and landscape improvements;

occupancy permits; and

environmental review documents for the Project certified after the Approval Date.

5.45 "Development Impact Fees" means all fees (i) established and imposed upon the Project by the City pursuant to the Mitigation Fee Act as set forth in California Government Code Section 66000 et seq. and this Agreement, (ii) in effect as of the Approval Date, and (iii) set forth on Exhibit E, entitled "Development Impact and Other Fees."

5.46 "Development Plan" means the Existing Land Use Regulations, this Agreement, the Subsequent Land Use Regulations to which Owner has

consented in writing, the Existing Development Approval, and Subsequent Development Approvals.

5.47 "Effective Date" means the 91st day after the second reading of the last of the ordinances adopting this Agreement, the General Plan Amendment, and the PC Text Amendment. If, before the expiration of the Effective Date, Government Code Section 65009(c)(1) is amended to enlarge the period of time in which a party may commence and serve an action identified in Government Code Section 65009(c)(1)(A-F), the Effective Date shall automatically be extended so that it falls one day after the end of the enlarged period of time.

5.48 "EIR" means the Opportunities Study Final Program Environmental Impact Report bearing California State Clearinghouse No. 2004071039 and which was certified by the City Council in June 2008 in connection with the approval of the OSA and which includes within its analysis the General Plan Amendment and the PC Text Amendment, as well as any addenda, supplemental, or subsequent environmental review related to that Opportunities Study Final Program Environmental Impact Report and approved or certified for the Project as of the Approval Date.

5.49 "ENR Index" means the Engineering News-Record Building Cost Index for the Los Angeles area.

5.50 "Exhibit" means an exhibit to this Agreement as listed in Section 6 below. A reference to an Exhibit includes all Attachments to that Exhibit.

5.51 "Existing Development Approval" means the Water Quality Management Plan which was in effect on the date of the second reading of the Ordinance adopting this Agreement., but only if it is consistent with this Agreement and is not later superseded by Subsequent Land Use Regulations to which Owner consents or Subsequent Development Approvals.

5.52 "Existing Financing District" means County of Orange Community Facilities District Nos. 87-6, 87-9, and 87-4.

5.53 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date, including the General Plan Amendment (including the range of Residential Units approved for the Project by the General Plan Amendment). However, changes to Land Use Regulations approved or becoming effective between the Approval Date and the Effective Date shall not be considered part of the Existing Land Use Regulations without Owner's prior written consent. Owner has consented to the General Plan Amendment and the PC Text Amendment, which shall be considered part of the Existing Land Use Regulations.

5.54 "Fair Market Value" means the appraised value as determined by an appraiser mutually acceptable to the Parties. If the Parties cannot agree on

an appraiser within ten (10) days after either Party requests a determination of the Fair Market Value, then, within an additional fifteen (15) days, each shall select an appraiser who shall appraise the subject property and the Parties shall attempt to agree on the Fair Market Value on the basis of the two appraisals. If the Parties cannot so agree within ten (10) days after the last of the two appraisals is delivered to both Parties, then, within an additional ten (10) days, the two appraisers shall select a third appraiser. Within thirty (30) days after being selected, that third appraiser shall select the appraisal of the first two appraisers which the third appraiser believes to be closest to actual Fair Market Value. The appraisal selected by the third appraiser shall then be binding on the Parties.

5.55 "FCPP" means the Foothill Circulation Phasing Plan.

5.56 "Fee Sharing Agreement" means the "Agreement for Management of the Foothill Circulation Phasing Plan within the City of Lake Forest" between the City and the County which is attached as Exhibit F.

5.57 "Final Map(s)" means one or more final subdivision maps which may be filed with respect to a Tentative Map, as set forth in Section 66456 *et seq.* of the California Government Code (the Subdivision Map Act).

5.58 "Final Sports Park Site" means the final location of the Sports Park as determined under the provisions of Exhibit B.

5.59 "Financing District" means a community facilities district authorized pursuant to the Mello-Roos Act, an assessment district, an infrastructure financing district, or other form of district or bond financing authorized by the State of California as a means to fund public improvements and/or the maintenance of those improvements.

5.60 "Financing District Policy" means the "Long-Term Financing and Land Secured Debt Policy" adopted by the City Council and attached to this Agreement as Exhibit G. The Financing District Policy may be amended or modified at the City's discretion, but any changes to the Financing District Policy after the Approval Date shall not apply to the Project without Owner's written consent.

5.61 "First Tentative Map," though stated in the singular, means the first one or more (as determined solely by Owner) Tentative Map(s) which together include the entire Property (other than, at Owner's option, PA 1A North) and which are collectively and concurrently approved by the City Council after the Effective Date.

5.62 "First Tentative Map Submittal Package" means the package of materials to be submitted with the Owner's application for the First Tentative Map, which shall include all materials required under the Existing Land Use Regulations,

the Project's Area Plan application, and the applicable CEQA Project description.

5.63 "General Plan" means the general plan of the City.

5.64 "General Plan Amendment" means the amendment of the City's General Plan for the Property as approved by the City Council on the Approval Date. A copy of the General Plan Amendment is attached as Exhibit H.

5.65 "Greater OSA Boundaries" means an area consisting of approximately 956 acres of undeveloped land, including the Property, within both the City and the 65 dB CNEL Noise Contour depicted in the Airport Environs Land Use Plan line as it existed prior to 2005, all as illustrated in Exhibit "A" to Lake Forest Resolution No. 2003-17.

5.66 "Implementing Agreement" means any agreement entered into by Owner and the City for the implementation of obligations established in this Agreement.

5.67 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, moratoria, initiatives, and official policies of the City governing the development and use of land, including, without limitation, the General Plan, zoning ordinances, subdivision ordinances (but not Tentative or Final Maps, which are Development Approvals), specific plans, planned community texts, and their respective amendments. Land Use Regulations govern, without limitation, the permitted use of land, the density or intensity of use, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement, construction, and initial occupancy standards and specifications applicable to the Project. Land Use Regulations do not include any City ordinance, resolution, code, rule, regulation or official policy governing:

- The conduct or taxation of businesses, professions, and occupations applicable to all businesses, professions, and occupations in the City;
- Taxes and assessments of general application upon all residents of the City, provided that the taxes and assessments are not imposed for the purpose of taxing the right, power or privilege of developing or improving land (e.g., excise tax) or to directly finance the acquisition or dedication of open space or any other public improvement in respect of which the Owner is paying any fee (directly or through a Financing District) or providing any improvement pursuant to this Agreement; or
- The control and abatement of nuisances.

5.68 "LFTM Fees" means fees imposed to fund LFTM Improvements pursuant to the LFTM Ordinance.

5.69 "LFTM Improvements" means those traffic and transportation improvements specified in the LFTM Ordinance.

5.70 "LFTM Ordinance" means (1) Ordinance No. 186, as adopted by the Lake Forest City Council on July 1, 2008, (2) Ordinance No. 218 , introduced concurrently with this Agreement, and (3) amendments to Ordinance No. 186 adopted and effective on or before the Approval Date. As of the Approval Date, the LFTM Ordinance was codified as Chapter 7.19 of the City's Municipal Code. The LFTM Ordinance shall be considered one of the Existing Land Use Regulations.

5.71 "LFTM Program" or "LFTM" means the Lake Forest Transportation Mitigation Program, as described in the LFTM Ordinance.

5.72 "Maintenance Fee" means a one-time fee to be paid by Owner to pay a portion of the City's maintenance costs of the Community Center and Sports Park, as set forth in Paragraph B3d of Exhibit B.

5.73 "Major Default" means the material and substantial failure (1) by Owner to timely meet Owner's Facilities Obligations, or (2) by City to timely issue Subsequent Development Approvals in accordance with its obligations under this Agreement. This definition is not intended to expand or limit the legal definition of "materiality," but only to establish the agreement of the Parties as to the nature of a default which could lead to an early termination of this Agreement.

5.74 "Mello-Roos Act" means the Mello-Roos Community Facilities Act of 1982 as amended (Section 53311 et seq. of the California Government Code).

5.75 "Minor Default" means a failure by Owner or City to comply with the terms and conditions of this Agreement which is not a "Major Default" as defined in Section 5.73 above.

5.76 "Mixed Use District" means an area within which a mixture of commercial, office, retail, and low-medium, medium, and high density residential uses are permitted in the same building, on the same parcel of land, or within the same PC Text Planning Area.

5.77 "Mortgagee" means, with respect to some or all of the Property, a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, any person or entity providing financing to Owner which is secured by some or all of the Property and/or some or all of the improvements on the Property, and their respective successors and assigns.

5.78 "Neighborhood Parks" means (i) traditional neighborhood parks, as described in the General Plan (three acres or more in size), which primarily serve the specific neighborhood in which they are located (including the five-acre park described in Paragraph C2 of Exhibit B), (ii) mini-parks as described in the

General Plan (less than three acres, although generally less than one acre), and (iii) the "Central Linear Park" and the "Borrego Linear Park" which are graphically depicted in Attachment 4 to Exhibit B.

5.79 "Neighborhood Parks Improvement Criteria" means the park improvement standards set forth for Neighborhood Parks in Attachment 5 to Exhibit B.

5.80 "Net Useable Acres."

- In the context of the Onsite Sports Park and the Affordable Site, "Net Useable Acres" means the total number of acres proposed for dedication by Owner to the City, less any acreage designated for public streets and slopes greater than 2%.

- In the context of Neighborhood Parks, "Net Useable Acres" means the total number of acres proposed for either dedication to the City or conveyance to a homeowners' association for Neighborhood Park purposes which meet the criteria for a Neighborhood Park set forth in Paragraph C of Exhibit B, as well as Attachment 5 to Exhibit B.

5.81 "Offsite Improvements" means those offsite road improvements to the Rancho ROW (see Section 5.106 below) and the Access Road (see Section 8.25.1 below), as identified on Exhibit I.

5.82 "Onsite Sports Park Site" means one of the potential Sports Park Sites which is located within the Property.

5.83 "Opportunities Study Area" means the approximately 838 acres of undeveloped land, including the Property, within the City which is the subject of the OSA GPA and the General Plan Amendment. Although the Opportunities Study Area has previously been considered to include as much as 956 acres within the Greater OSA Boundaries, only those properties which are the subject of the OSA GPA and the General Plan Amendment are considered to constitute the Opportunities Study Area for purposes of this Agreement.

5.84 "Ordinary Course of Owner's Development" means the actions and improvements which typically would occur or be made in the ordinary course of Owner's discretionary schedule for the Development of the Project.

5.85 "Original City Agreement" means Development Agreement No. 88-3 between First American Trust Company, a California corporation, Trustee, etc., and the County dated May 23, 1988, (the "County Development Agreement"), as amended and extended by the "First Amendment to the Baker Ranch Development Agreement" between Baker Ranch Properties, LLC, and the City dated February 9, 2001, and as further amended by eight addenda to the First Amendment to the Baker Ranch Development Agreement, culminating in a final addendum dated September 28, 2005.

5.86 "OSA" means the Opportunities Study Area.

5.87 "OSA GPA" means the general plan amendment adopted by the City on July 1, 2008, for an 838-acre area within the Greater OSA Boundaries which established new uses within the Opportunities Study Area. Although the OSA GPA, when approved, included the Property, the portion of the OSA GPA applicable to the Property never became effective.

5.88 "OSA Landowners" means all owners of property within the Opportunities Study Area.

5.89 "Owner" means Shea Baker Ranch Associates, LLC, a California limited liability company, and Owner's successors and assigns as set forth in Section 14.14.

5.90 "Owner's Facilities Obligations" means those obligations of Owner to contribute to the Public Benefits, to the extent of and limited by this Agreement, including Exhibit B.

5.91 "Owner's Remaining FCPP Obligations" means those fee payment obligations of Owner delineated in Sections 8.26.1 and 8.26.2.

5.92 "Owner's Vested Right" means Owner's guaranteed right to develop the Property as set forth in this Agreement, with particular, but not exclusive, reference to Section 8.

5.93 "PA 1A North" means the Mixed Use District shown in the PC Text Amendment as that portion of Planning Area 1A north of Rancho Parkway.

5.94 "Park Dedication Requirement" means the requirements of Section 7.38.040 of the City's Municipal Code pertaining to the dedication of park land to the City in connection with the approval of a tentative map for a subdivision.

5.95 "Park Site Offer" means an offer by Owner to dedicate land for use by the City as a site for the Sports Park, as set forth in Paragraph B2 of Exhibit B.

5.96 "Paragraph" means a lettered or numbered paragraph of an Exhibit to this Agreement, unless specifically stated to refer to another document or matter. (Note below that "Section" means a lettered or numbered section of the main body of this Agreement.) A reference to a Paragraph includes all subparagraphs of that Paragraph.

5.97 The "Parties" means the City and Owner. A "Party" means either the City or the Owner.

5.98 "PC Text Amendment" means the amendment of the Baker Ranch Planned Community Text for the Property as approved by the City Council on the Approval Date. A copy of the PC Text Amendment is attached as Exhibit J.

5.99 "Phased Final Maps" means multiple 'A' and 'B' Maps filed to finalize any Tentative Map as permitted by Government Code Section 66456.1 in conjunction with Sections 7.8.1 and 8.5 of this Agreement.

5.100 "Planned Community Text" refers to the PC Text Amendment, including future amendments of the PC Text Amendment made pursuant to this Agreement.

5.101 "Project" means the development of the Property as set forth in the Development Plan.

5.102 "Property" means the real property described in Exhibit A.

5.103 "Public Benefits" means Owner's contributions, as described in Exhibit B, toward land, improvements, and funding to further the development of (a) the "Public Facilities" (consisting of the City Facilities, the LFTM Improvements[2], the Neighborhood Parks, and the Alton Segment), and (b) the School Facilities.

5.104 "Public Facilities" means the City Facilities, the LFTM Improvements, the Neighborhood Parks, and the Alton Segment.

5.105 "Public Facilities Phasing and Financing Plan" means the component of the Project's Area Plan that will describe the timing and method of financing of the Public Facilities and the Project's other standard subdivision improvements relative to the anticipated phasing and/or sequencing of the filing of Final Maps in the Ordinary Course of Owner's Development. The Public Facilities Phasing and Financing Plan will include those elements listed in Exhibit K.

5.106 "Rancho ROW" refers to the right-of-way described in Exhibit I which provides access adjacent to the Baker Rancho Parkway Site.

5.107 "Reservation of Authority" means the rights and authority specifically reserved to City which limits the assurances and rights provided to the Owner under this Agreement. The Reservation of Authority is described in Section 8.8.

5.108 "Residential Unit" refers solely to a residential dwelling unit within the Project and does not include any "Unit" as defined in Section 5.121 which is not, in fact, a residential dwelling unit.

5.109 "Resource Agencies" means the California Department of Fish and Game, United States Fish and Wildlife Service, United States Army Corps of

[2] In the case of the LFTM Program discussed below, the Public Benefits include Project mitigation and additional and/or accelerated improvements beyond Project mitigation which have been blended into a single improvement program.

Engineers, United States Environmental Protection Agency, California State Office of Historic Preservation, and Santa Ana Regional Water Quality Control Board. "Resource Agency" means any single one of the Resource Agencies.

5.110 "Resource Agency Permits" means the issuance of any permit by, the granting of any approval by, or the holding of any consultation with, any one or more of the Resource Agencies.

5.111 "School Facilities" means, in general, the school facilities of the Saddleback Valley Unified School District. "School Facilities" does not refer to any particular school, school site, or other school-related facility.

5.112 "Section" means a numbered section of the main body of this Agreement unless specifically stated to refer to another document, statute, or matter. (Note above that "Paragraph" means a lettered or numbered section of an Exhibit to this Agreement.) A reference to a Section includes all subsections of that Section.

5.113 "Sports Park" means the land and improvements for a proposed community sports park as described in Exhibit B, with the improvements being made by the City on land collectively dedicated by some of the OSA Landowners and/or acquired by the City.

5.114 "Sports Park Fee Credit" means the credit toward Owner's City Facilities Fee obligations which Owner will receive pursuant to Paragraphs B2e, B2f, or B2g of Exhibit B.

5.115 "Subsequent Development Approvals" means all Development Approvals approved, granted, or issued for the Project after the Effective Date which are required or permitted by the Existing Land Use Regulations, the Subsequent Land Use Regulations to which Owner has consented in writing, and this Agreement. A Development Approval applied for by Owner after the Approval Date and approved, granted, or issued before the Effective Date also shall be considered a Subsequent Development Approval.

5.116 "Subsequent Land Use Regulations" means those Land Use Regulations which are both adopted and effective after the Approval Date and which are not included within the definition of Existing Land Use Regulations.

5.117 "Superpad Condition" means improvement of real property consisting of rough grading, drainage approved by the City Engineer, all necessary (per City standards) utility infrastructure stubbed to the boundaries of the parcel or lot, compaction certified by a licensed soils engineer, completion of environmental remediation required by a Resource Agency for that parcel or lot, compliance with mitigation measures imposed on the improvement of that

parcel or lot,[3] and the provision of access, where applicable, to the extent specifically identified on Exhibit C-1 and Attachments 1a and 1b to Exhibit B. As used within this Agreement, the term "Superpad Condition" applies only to those portions of a conveyed parcel or lot which meet the definition of "Net Useable Acres."[4]

5.118 "Tentative Map" means any Project tentative map approved after the Effective Date, including a tentative parcel map, as defined in the California Subdivision Map Act and the Municipal Code. With the approval of any Tentative Map, the City shall identify the conditions that must be satisfied for the approval of any Final Maps recorded with respect to that Tentative Map.

5.119 "Term" means the term of this Agreement as set forth in Section 7.2 of this Agreement.

5.120 "Timely" means in strict compliance with an applicable provision of this Agreement which specifies the time in which an act must be performed. In the case of applications or actions subject to the Permit Streamlining Act (California Government Code Section 65920 et seq.), where this Agreement does not specify such a time, "timely" shall mean the time limits set forth in the Permit Streamlining Act.

5.121 "Unit" means (i) a residential dwelling unit within the Project or (ii) 1,000 square feet of non-residential space in an area other than a Mixed Use District designated by the Existing Land Use Regulations for residential use, provided that only non-residential space meeting the definition of "chargeable covered and enclosed space" in Government Code Section 65995(b)(2) shall be included in calculating or referring to Units under this definition. This definition is provided solely for the purpose of calculating the City Facilities Fee described in Exhibit B, and is not intended to allow for conversion of non-residential uses to residential uses.

6. EXHIBITS. All Exhibits attached to this Agreement are incorporated as a part of this Agreement. Those Exhibits are:

Exhibit	Description
A	Legal Description of the Property
B	Public Benefits
C	Affordable Housing Implementation Plan

[3] For clarification, any Project mitigation measure or condition of approval which is not directly tied to the improvement only of the parcel or lot in question need not be satisfied to meet this definition.

[4] For example, where a parcel or lot is required to be delivered in "Superpad Condition," only the Net Useable Acres conveyed shall be required to be in Superpad Condition.

C-1	Affordable Site
D	Assignment and Assumption Agreement
E	Development Impact and Other Fees
F	Fee Sharing Agreement
G	City's Long-Term Financing and Land Secured Debt Policy
H	General Plan Amendment
I	Rancho Parkway ROW, Access Road ROW, and Offsite Improvements
J	PC Text Amendment
K	Elements of Public Facilities Phasing and Financing Plan
L	Park Option Site

7. GENERAL PROVISIONS.

7.1 Binding Effect of Agreement. This Agreement shall be recorded against the Property and shall run with the land. The Development shall be carried out only in accordance with the terms of this Agreement. Unless and until (1) some or all of the Property is released as provided elsewhere within this Agreement, or (2) Owner has fully performed its obligations arising out of this Agreement, or (3) this Agreement terminates as provided in Section 7.3 below, whichever occurs first, no portion of the Property shall be released from this Agreement.

7.2 Term of Agreement. The Term shall commence on the Effective Date. The Term shall continue for a period of twenty (20) years from the Effective Date, subject to the following:

7.2.1 *Extensions of Term.* The Term shall be extended for periods equal to the time during which:

7.2.1.1 Litigation, including appeals, is pending which challenges any matter, including compliance with CEQA or any other local, state, or federal law, related in any way to the approval or implementation of all or any part of the Development Plan. Any such extension shall be equal to the time between the filing of litigation, on the one hand, and the entry of final judgment or dismissal, after the conclusion of all appeals and/or the expiration of all time periods during which an appeal could be brought, on the other. All such extensions shall be cumulative.

7.2.1.2 Any application by Owner or City for state or federal regulatory permits and/or approvals required for the Project, including Resource Agency Permits, has been pending more than one year after its submittal.

7.2.1.3 This Agreement is tolled and/or performance is excused pursuant to the express terms of this Agreement, including, but not limited to, Sections 8.8.4, 8.15, and 14.10.

7.2.2 As provided in Section 7.3 and elsewhere within this Agreement, the Term may end earlier than the end of the Term specified in this Section.

7.3 Termination. This Agreement shall be deemed terminated and of no further effect upon the earlier occurrence of any of the following events:

7.3.1 Expiration of the Term as set forth in Section 7.2;

7.3.2 Entry of a final judgment setting aside, voiding, or annulling the adoption of the ordinance approving this Agreement;

7.3.3 The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement;

7.3.4 Completion of the Project in accordance with the terms of this Agreement, including issuance of all required occupancy permits and acceptance, as required by state law, by City, or the applicable public agency, of all required dedications and the satisfaction of all of Owner's obligations under this Agreement; or

7.3.5 As may be provided by other specific provisions of this Agreement.

7.4 Effect of Termination. Subject to Section 8.12, upon any termination of this Agreement, the only rights or obligations under this Agreement which either Party shall have are:

7.4.1 The completion of obligations which were to have been performed prior to the date of the termination, other than those which are separately addressed in Sections 9.3.5 or 12;

7.4.2 The performance and cure rights set forth in Section 12; and

7.4.3 Those obligations that are specifically and explicitly set forth as surviving this Agreement, such as those described in Sections 8.12, 8.21, 9.5, 11.1 through 11.8 and 14.15 (see specific and explicit "survival' references in each of these Sections).

7.5 Amendment or Cancellation of Agreement. This Agreement may be amended from time to time or canceled only by the written consent of both City and Owner in the same manner as its adoption, as set forth in California Government Code Section 65868. Any amendment or cancellation shall be in a form suitable for recording in the Official Records of Orange County, California. An amendment or other modification of this Agreement will continue to relate back to the Effective Date of this Agreement (as opposed to the effective date of the amendment or modification), unless the amendment or modification expressly states otherwise.

7.6 Release of Obligations With Respect to Individual Lots Upon Certification of Occupancy. Notwithstanding any other provision of this Agreement:

7.6.1 *Release Upon Sale to Ultimate User.* When any individual lot, whether residential, commercial, mixed use, or open space, has been subdivided and sold, leased, or made available for lease to a member of the public or any other ultimate user, and a certificate of occupancy has been obtained for the building(s) on the lot, that lot and its owner shall have no further obligations under and shall be released from this Agreement automatically and without necessity of a separate instrument. Additionally, Owner shall have no further obligations under and shall be released from the obligations and encumbrances of this Agreement with respect to that lot. This Section 7.6.1, however, shall not release any transferee from any obligation to pay assessments to a Financing District which runs with the transferred land.

7.6.2 *Conveyance to Homeowner's Association.* Upon the conveyance of any lot, parcel, or other property, whether residential, commercial, or open space, to a homeowners' association, property owners' association, or public or quasi-public entity, that lot, parcel, or property and its owner shall have no further obligations under and shall be released from this Agreement automatically and without necessity of a separate instrument, provided that this paragraph shall not be deemed to release any transferee (including a good faith purchaser) from obligations to pay special taxes imposed in connection with a Financing District. Additionally, Owner shall have no further obligations under and shall be released from the obligations and encumbrances of this Agreement with respect to that lot.

7.6.3 *No Formal Action Required.* No formal action by the City is required to effect any release occurring under this Section. However, within forty-five (45) days after Owner's request, City shall sign and deliver an estoppel certificate or other document to acknowledge the release.

7.7 Minor Modifications. The provisions of this Agreement require a close degree of cooperation between the Parties. "Minor Modifications" to the Project may be required from time to time to accommodate design changes, engineering changes, and other refinements related to the details of the Parties' performance. "Minor Modifications" shall mean changes to the Project that are otherwise consistent with the Development Plan, and which do not result in a change in the type of use, an overall increase in density or intensity of use, significant new or increased environmental impacts that cannot be mitigated, or violations of any applicable health and safety regulations in effect on the Effective Date.

Accordingly, the Parties may mutually consent to adopting "Minor Modifications" through their signing of an "Operating Memorandum" reflecting the Minor Modifications. Neither the Minor Modifications nor any Operating Memorandum shall require public notice or hearing. The City Attorney and City Manager shall be authorized to determine whether proposed modifications and refinements are "Minor Modifications" subject to this Section 7.7 or more significant changes requiring amendment of this Agreement. The City Manager may execute any Operating Memorandum without City Council action.

7.8 Term of Map(s) and Other Project Approvals.

7.8.1 *Subdivision Maps.* Pursuant to Government Code Section 66452.6, the term of all Tentative Maps that are approved for all or any portion of the Property shall be automatically extended to a date coincident with the Term and, where not prohibited by state law, with any extension of the Term.

7.8.2 *Site Development Permits and Area Plans.* Unless prohibited by state law, Site Development Permits and Area Plans for the Project shall have terms that are no shorter than the Term and any extension of the Term.

7.8.3 *Other Development Approvals.* Pursuant to Government Code Section 65863.9, any and all other Development Approvals for any portion of the Project shall automatically be extended for a term ending concurrently with the applicable Tentative Maps for the Project. Pursuant to Section 7.8.1, those terms shall be the same as the Term of this Agreement and any extension of this Agreement. The replacement of a Tentative Map with a Final Map shall not end the term of a Development Approval.

7.8.4 *Decisions of Development Services Director.* Any decision of the Development Services Director (or the person with the then-equivalent title of Development Services Director) with respect to Subsequent Development Approvals may be appealed to the City's

Planning Commission pursuant to Section 2.04.100(D) of the City's Municipal Code. Decisions of the Planning Commission on appeal may be appealed to the City Council pursuant to Section 2.04.100(E) of the City's Municipal Code.

7.9 Relationship of City and Owner. The contractual relationship between City and Owner arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third-party beneficiary rights, except as provided in the footnote to Section 8.25.

7.10 Notices. All notices, demands, and correspondence required or permitted by this Agreement shall be in writing and delivered in person or mailed by first class or certified mail, postage prepaid, addressed as follows:

If to City, to:

City of Lake Forest
25550 Commercentre Drive
Lake Forest, California 92630
Attn: City Manager

With a copy to:

Scott C. Smith
Best Best & Krieger LLP
5 Park Plaza, Suite 1500
Irvine, California 92614

If to Owner, to:

Shea Properties, LLC
130 Vantis, Suite 200
Aliso Viejo, CA 92656
Attn: General Counsel

AND

Shea Homes
1250 Corona Pointe Court
Suite 600
Corona, CA 92879
Attn: Division President

AND

Baker Ranch Properties
9140 Irvine Center Drive

Irvine, CA 92618
Attn: Michael M. Watkins

With copies to:

Larry Tucker
One Upper Newport Plaza
Newport Beach, CA 92660

AND

Tim Paone
Theodora, Oringher, Miller & Richman
535 Anton Boulevard
Ninth Floor
Costa Mesa, CA 92626

City or Owner may change its address by giving notice in writing to each of the other names and addresses listed above. Thereafter, notices, demands, and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery or, if mailed, two (2) business days following deposit in the United States mail.

7.11 Waiver of Right to Protest. Execution of this Agreement is made by Owner without protest. Owner knowingly and willingly waives any rights it may have under Government Code Section 66020 or any other provision of law to protest the imposition of any fees, dedications, reservations, or other exactions which are specifically imposed on the Project by this Agreement. Where this Agreement authorizes the future determination and imposition of fees, dedications, reservations, or other exactions without specifying (i) their specific quantity or amount or (ii) the method for determining that specific quantity or amount, Owner reserves the right to protest as being in excess of that permitted under the law both (i) that specific quantity or amount or (ii) the method for determining that specific quantity or amount.

8. DEVELOPMENT OF THE PROPERTY.

8.1 Owner's Vested Right. Owner shall have the vested right to complete Development of the Property in accordance with the Development Plan ("Owner's Vested Right"). Owner's Vested Right shall include, but not be limited to, the following rights, each of which is subject to Owner's compliance with the development standards and development limits contained in the Development Plan[5]:

[5] The Development Plan, as defined in Section 5.46 above, includes the First Tentative Map.

8.1.1 *Residential Units.* Under all circumstances, Owner shall have the vested right, but not the obligation, to build a minimum of 1,957 Residential Units and a maximum of 2,815 Residential Units, including appurtenant facilities.

8.1.2 *Residential Units Under City Alton Process and Borrego Condition.* If the City proceeds with construction of City Alton and the Borrego Condition is imposed, Owner shall have the vested right, but not the obligation, to build a minimum of 2,100 Residential Units[6] and a maximum of 2,615[7] Residential Units, including appurtenant facilities.

8.1.3 *Non-Residential Development.* Under all circumstances, Owner shall have the vested right, but not the obligation, to build 320,000 square feet of non-residential space, including appurtenant facilities.

8.1.4 *Timely Action by City.* Owner shall have the vested right to the timely issuance by the City of all Subsequent Development Approvals and the timely taking by the City of all other actions that are (i) requested by Owner and (ii) consistent with the terms of this Agreement.

Owner's Vested Right shall be subject to the Reservation of Authority set forth in Section 8.8, and may not be modified or terminated except as expressly provided by this Agreement.

8.2 Governing Land Use Regulations. The Land Use Regulations applicable to the Project and the Property shall be those contained in the Development Plan. An amendment or other modification of this Agreement will not change these applicable Land Use Regulations unless the amendment or modification expressly provides otherwise. Other than as authorized in Section 8.8 ("Reservation of Authority") of this Agreement, no Subsequent Land Use Regulation shall apply to the Property unless Owner and City mutually agree in writing that the specifically proposed Subsequent Land Use Regulation shall apply to the Property. The City Council has determined that the provisions of this Agreement comply with and implement the provisions of the City's subdivision ordinance (comprising Title 7 of the City's Municipal Code).

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[6] The increase in the minimum number of Residential Units which may be built under the circumstances specified in Section 8.1.2 as compared to Section 8.1.1 reflects Owner's vested right to build 425 Conditionally Vested Market Rate Apartments pursuant to Paragraph E2u(ii) of Exhibit B.

[7] The decrease in the maximum number of Residential Units which may be built under Section 8.1.2 as compared to Section 8.1.1 reflects a reduction in the land area owned by Owner as a result of the conveyance described in Paragraph E2u(vi) of Exhibit B.

8.2.1 Nothing contained in this Section shall be deemed to authorize City to, and City agrees not to, withhold any Development Approval, including, but not limited to, building permits, approvals, and/or certificates of occupancy, based on Owner's failure to comply with any Land Use Regulation that is not applicable to the Project because of this Agreement.

8.3 Permitted Uses. Except as otherwise provided within this Agreement, the permitted uses of the Property shall be as provided to their full extent in the Development Plan.

8.4 Density and Intensity. Except as otherwise provided within this Agreement, the density and intensity of use for all Development on the Property shall be as provided to their full extent in the Development Plan.

8.5 Subdivision Map and Area Plan Processing.

8.5.1 *First Tentative Map Submittal Package and Conditions*. The First Tentative Map Submittal Package shall include, among other items, the applications for the First Tentative Map and the Area Plan. The First Tentative Map Submittal Package may be submitted by Owner to the City after the Approval Date, but final action on the First Tentative Map and the Area Plan by the City Council may not occur until after the Effective Date.

8.5.2 *Scope and Approval of Area Plan.* The Area Plan shall be approved concurrently with the approval of the First Tentative Map. The Area Plan may show the Alton Segment as being constructed in those phases or sequences more particularly described in Exhibit B.

8.5.3 *Scope and Approval of First Tentative Map*. Notwithstanding any contrary provision of the Existing Land Use Regulations or this Agreement, the First Tentative Map shall consist of one or more Tentative Maps which collectively include the entire Property (other than, at Owner's option, the Mixed Use District shown in the PC Text Amendment as that portion of Planning Area 1A north of Rancho Parkway ("PA 1A North")). The First Tentative Map shall be approved by the City Council if consistent with the Development Plan.

8.5.4 *'A' and 'B' Maps.* The First Tentative Map approval shall specify for the entire Property ***both*** (i) those conditions, as limited below, required for approval and recordation of an 'A' Map (see Section 5.1) ("'A' Map Conditions") and (ii) those more detailed conditions required for approval and recordation of a 'B' Map (see Section 5.21) ("'B' Map Conditions"). 'A' Map Conditions shall be limited to

conditions that allow financing and/or conveyance of the land within the boundaries of the 'A' Map and shall not include conditions related to the subdivision of the Property for development and construction. Each 'A' Map shall list all 'B' Map Conditions of the First Tentative Map which will apply to the land covered by that 'A' Map. 'B' Map Conditions shall be consistent with any Public Facilities Phasing and Financing Plan included within an approved Area Plan and the Development Plan.

After approval and recordation of any 'A' Map, the area within that 'A' Map may be further subdivided with one or more 'B' Maps. In that case, the subsequent filing and approval of a 'B' Map shall be subject only to the Development Plan and the 'B' Map Conditions of the First Tentative Map for the land within that 'B' Map, unless that 'B' Map substantively modifies the First Tentative Map (or the most recent Tentative Map approved after approval of the First Tentative Map), in which case additional 'B' Map Conditions may be imposed solely to the extent required to accommodate the substantive modification.

The City shall not impose any requirement for the Alton Remainder to be constructed (or require that any bond be posted to secure the construction of the Alton Segment) as a condition to an 'A' Map. The City may impose a condition for the Alton Remainder to be constructed or the obligation to construct the Alton Remainder bonded as a condition to a B Map, but only if and to the extent that the B Map includes a portion of the Alton Remainder within that B Map's borders.

8.5.5 *Phased Final Maps.* Each Final Map for a portion of any approved Tentative Map shall be considered a "phased final map" as that term is used in Government Code Section 66452.6(a)(1) of the California Subdivision Map Act. To comply with Section 66452.6(a)(1), Owner has requested and City agrees to permit the filing of up to twenty phased Final Maps. This request by Owner shall be deemed to be in effect at the time of the approval of each Tentative Map.

8.6 Requirement for Reservation and Dedication of Land. Except as otherwise provided within this Agreement[8], the requirements for reservation and dedication of land are expressly limited to those provided in the Development Plan.

[8] All requirements for dedication and improvement of parkland, public facilities, community facilities, and Alton Parkway are set forth within this Agreement and no further requirements may be imposed.

8.7 Residential Unit Counts to be Determined with First Tentative Map Approval. The City Council shall, concurrently with the approval of the First Tentative Map, determine the maximum number of Residential Units which Owner may build as part of the Project (other than within PA 1A North, if PA 1A North is not included within the First Tentative Map Approval). That number shall be consistent with Owner's Vested Right. This subsection is not intended to provide the City Council with any discretion to place any limitations upon Owner's Vested Right. The maximum number of Residential Units approved shall be automatically increased upon the termination of a Park Site Offer as set forth in Paragraph B2j of Exhibit B, and the First Tentative Map approval shall provide for the possibility of such an increase.

8.8 Reservation of Authority. The following Land Use Regulations, and Development Approvals shall apply to the Property and the Project:

8.8.1 *Processing Fees.* Processing fees and charges imposed by the City to cover the City's estimated or actual costs of reviewing and processing applications for the Project, providing inspections, conducting Annual Reviews, providing environmental analysis, or for monitoring compliance with this Agreement or any Development Approvals granted or issued, provided such fees and charges are in force and effect on a general basis on the date of filing such applications with the City. This Section shall not be construed to limit the authority of City to charge its then-current, normal, and customary application, processing, and permit fees for Subsequent Development Approvals, which fees are designed to reimburse City's expenses attributable to such application, processing, and permitting and are in force and effect on a City-wide basis at such time as the Subsequent Development Approvals are granted by City, notwithstanding the fact that such fees may have been increased by City subsequent to the Effective Date;

8.8.2 *Procedural Regulations.* Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure;

8.8.3 *Uniform Codes, Standards, and Procedures.* Provided that (i) they are uniformly applied to all development projects within the City and (ii) are not applied retroactively to any Development Approval issued before their adoption or amendment:

Uniform codes governing engineering and construction standards and specifications adopted by the City pursuant to state law. Such codes include, without limitation, the City's current adopted version of the Uniform Administrative Code, California Building Code, California Plumbing Code, California

Mechanical Code, California Electrical Code, and California Fire Code;

Local amendments to those uniform codes which are adopted by the City pursuant to state law, provided they pertain exclusively to the preservation of life and safety; and

The City's standards and procedures regarding the granting of encroachment permits and the conveyance of rights and interests which provides for the use of or the entry upon public property.

8.8.4 *Temporary Regulations.* Temporary regulations which may be in conflict with this Agreement, but which are objectively required (and for which there are no available reasonable alternatives) to protect the public health and safety in the event of a sudden, unexpected occurrence involving a clear and imminent danger, and demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services within the immediate community. Such regulations must be a valid exercise of the City's police power and must be applied and construed so as to provide Owner, to the maximum extent possible, with the rights and assurances provided in this Agreement. To apply to the Property, such regulations must be adopted after a public hearing and must be based upon findings of necessity established by a preponderance of the evidence. Any regulations, including moratoria, enacted by City and imposed on the Property to protect the public health and safety in the circumstances described above shall toll the Term and any time periods for performance by Owner and City set forth in this Agreement;

8.8.5 *Public Facilities.* As to any permit for the construction of the Public Facilities, the City's public improvement engineering ordinances, policies, rules, regulations and standards in effect at the time of the issuance of that permit, to the extent that they do not require improvements greater in size, scope, quality, or quantity than required by the Existing Land Use Regulations;

8.8.6 *Building Permit Review Process.* The review and approval of Owner's applications for building permits for the Project consistent with this Agreement, including Section 8.14 below; and

8.8.7 *Eminent Domain.* The exercise of the power of eminent domain.

Except for fees expressly required by other Sections of this Agreement, the provisions of this Section 8.8 are not intended to and shall not waive any provisions of state law pertaining to limitations on the imposition of fees by

the City upon Owner or the Development, including limitations contained in the California Subdivision Map Act.

8.9 Development Impact and Other Fees. Subject to the limitations of Section 8.10 below, Owner shall pay to the City only (i) those Development Impact Fees imposed by City which are in effect on the Approval Date and are uniformly applied to all development projects within the City ("City Fees" in Exhibit E), (ii) those fees which are specifically created by Exhibit B to this Agreement or stated by Exhibit B to apply to the Project and, then, only to the extent agreed to by Owner within this Agreement ("DA Fees" in Exhibit E), and (iii) solely for collection purposes, those fees levied by the County or other public agencies other than the City, but which are collected by the City[9] ("Other Agency Fees" in Exhibit E). The Parties have used their best efforts to list on Exhibit E all fees within these three categories, as well as the amounts believed to have been paid toward these fees as of the Approval Date. The omission of any Other Agency Fee shall not invalidate or otherwise affect Owner's obligation to pay that fee. The Parties' acknowledge that Exhibit E reflects only the Parties' estimate of fees paid and fees owed and that their estimate may not be accurate.

8.10 Limitation on Fees. Owner shall have no obligation for Development Impact Fees or other City-imposed fees related to traffic, roadways, parks, civic facilities, community centers, affordable housing, open space, trails, or schools, except as expressly provided in Section 9, Exhibit B, Exhibit C, and Exhibit E, or in the Schools Facility Funding and Mitigation Agreement between Owner and the Saddleback Valley Unified School District which is attached as Attachment 6 to Exhibit B.

8.11 Adequacy of Required Infrastructure. Provided that Owner complies with Owner's Facilities Obligations and subject to the Reservation of Authority, the City warrants and agrees that:

(1) There will be sufficient capacity to accommodate the Project in the infrastructure and services owned, operated, outsourced, controlled, and/or provided by the City, including, without limitation, traffic circulation, storm drainage, trash collection, and flood control; and

(2) Where City owns, operates, outsources, controls, and or/provides infrastructure or services, City shall serve the Project and there shall be no restrictions placed upon Owner concerning hookups or service for the Project, except for reasons beyond City's control.

[9] Such as those fees collected under the Fee Sharing Agreement.

Notwithstanding the foregoing, City does not warrant the adequacy of and City shall not be responsible or liable for any infrastructure or services that are not owned, operated, outsourced, controlled, and/or provided by City.

8.12 Vested Rights Upon Termination. Termination of this Agreement shall not invalidate any Land Use Regulations or terminate any Subsequent Development Approvals obtained prior to the date of termination. Upon any termination of this Agreement, the extent, if any, of Owner's vested rights as of the date of termination shall be determined by state and federal statutes and case law and the then current factual state of the Development. Subject to that determination of vested rights and all other applicable law, Owner's right to continue development of the Project pursuant to some or all of the Development Plan shall be subject to the ordinary exercise of the City's police power, including the adoption of a general plan amendment, zoning change, or other Land Use Regulations applicable to the Property. Owner acknowledges that, following termination of this Agreement, except as to any development that has vested, City may amend the General Plan designation of the Property and/or the zoning designation applicable to the Property. The terms of this Section 8.12 are, by their very nature, intended to survive the termination of this Agreement.

8.13 Waiver of Density Bonus. While this Agreement is in effect, Owner waives any right Owner may have to a density bonus under Government Code Sections 65915 through 65917.5 or the City's Municipal Code. Densities vested hereunder include all densities available as density bonuses under the City's Municipal Code and Government Code Sections 65915 through 65917.5.

8.14 Staffing and Expedited Processing. City shall employ all lawful actions capable of being undertaken by City to (i) promptly receive and, when complete, accept all applications for Subsequent Development Approvals and related environmental analysis, if any (collectively, "Applications"), and (ii) expeditiously process and take action upon the Applications in accordance with applicable law. With respect to the "plan-checking" of Owner's submittals, the City shall complete the plan-checking process within thirty (30) days of receiving each plan check submittal from Owner.

In order to further expedite either the processing of Applications or the review and "plan-checking" of Owner's submittals, Owner may request the City to retain a consultant or other third party to supplement the work of City staff. Within twenty (20) days after any such request, the City shall inform Owner in writing of the estimated cost of retaining such assistance. If, within ten (10) days after the City informs Owner of that estimated cost, Owner agrees in writing to pay the full cost of retaining such assistance, the City shall immediately retain the consultant or other third party to provide that assistance. Under such circumstances, the City shall continue to use its best efforts to undertake the most accelerated processing of the Applications

which the law permits. The City may require Owner to tender deposits against the estimated cost of retaining such assistance, and may further require Owner to make periodic payments of the costs of retaining such assistance.

8.15 Changes in Federal and State Law. The Property may be subject to subsequently enacted state or federal laws or regulations which preempt local regulations or mandate the adoption of local regulations that conflict with the Development Plan. Upon discovery of such a subsequently enacted federal or state law, City or Owner shall provide the other Party with written notice, a copy of the state or federal law or regulation, and a written explanation of the legal or regulatory conflict created. Within ten (10) days thereafter, City and Owner shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation. In such negotiations, City and Owner agree to preserve the terms of this Agreement and the rights of Owner as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Owner in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Owner. City also agrees to process, in the same expedited manner as set forth for Applications in Section 8.14, Owner's proposed changes to the Development Plan as needed to comply with such federal or state law, and to process those changes in accordance with City procedures. Any delays caused by such changes in state or federal law shall toll the Term and the time periods for performance by Owner and City set forth in this Agreement.

8.16 Cooperation in Securing Other Governmental Approvals and Permits. City agrees to make its staff readily available, at Owner's cost, to assist Owner in securing permits and approvals required by other governmental agencies to assure Owner's ability to (i) implement the Development Plan and (ii) perform its obligations under this Agreement in a timely manner. City does not warrant or represent that any other governmental permits or approvals will be granted.

8.17 Compliance with CEQA. The City Council has found that the environmental impacts of the Project have been addressed in the EIR. Where CEQA requires that an additional environmental analysis be performed in connection with a future discretionary approval granted by the City for the Project, the City, consistent with Section 8.14, shall provide the cooperation needed to expeditiously complete those actions.

8.18 Moratorium. Owner and City agree that any City moratorium, whether enacted by initiative, City action or otherwise, shall be subject to the same constraints and limitations under this Agreement as Subsequent Land Use Regulations adopted by the City Council.

8.19 Timing of Development. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal. 3d 465 (1984), that the failure of the parties in that case to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the specific intent of the Parties to provide for the timing of the Project in this Agreement. To do so, the Parties acknowledge and provide that Owner shall have the right to complete the Project in such order, at such rate, at such times, and in as many development phases and sub-phases as Owner deems appropriate in its sole subjective business judgment. This right shall not create any obligation on Owner's part to complete some or all of the Project. This Section shall not alter the City's opportunity to construct "City Alton" on the terms and conditions set forth in Exhibit B.

8.20 Conditions, Covenants and Restrictions. Owner shall have the ability to reserve and record such covenants, conditions, and restrictions (CC&Rs) against the Property as Owner deems appropriate, in its sole and absolute discretion, except that with respect to the Affordable Units, CC&Rs shall be recorded. CC&Rs may not conflict with this Agreement or the General Plan. Before recording any CC&Rs, Owner shall provide a copy of the CC&Rs to the City for review and approval by the City Attorney. The City Attorney's review shall be limited to determining if the CC&Rs substantially comply with this Agreement. Within thirty (30) days after receiving a copy of the proposed CC&Rs from Owner, the City Attorney shall provide Owner with either (i) a statement that the CC&Rs substantially comply with this Agreement ("CC&R Approval") or (ii) written comments identifying each aspect of the CC&Rs which the City Attorney believes not to be in substantial compliance with this Agreement (a "Statement of Non-Compliance"). If the City Attorney fails to provide Owner with either CC&R Approval or a Statement of Non-Compliance within thirty (30) days following a written request by Owner, City shall be deemed to have approved the CC&Rs and Owner may record the CC&Rs against the Property. If the City Attorney provides a Statement of Non-Compliance, Owner shall have thirty (30) days in which to respond to the Statement of Non-Compliance. Upon submittal of Owner's response, the procedure described above for the initial submittal and City Attorney review of proposed CC&Rs shall again be followed. This procedure shall be followed until Owner either (1) receives CC&R Approval, (2) submits the compliance issues to binding arbitration pursuant to the rules of the American Arbitration Association, (3) files an action for declaratory relief in Orange County Superior Court seeking a judicial determination of the substantial compliance of the proposed CC&Rs, or (4) agreement is otherwise reached between the Parties allowing for the recording of the CC&Rs. The CC&Rs may run with the land and bind Owner's successors and assigns. Except as provided above, any dispute between the Parties regarding the City's approval or rejection of the CC&Rs shall be subject to immediate and binding arbitration pursuant to the rules of the American Arbitration Association.

8.21 Refund of Fees. Within ninety (90) days after any termination of this Agreement, any Development Impact Fees or any other funds of any nature which have been paid by Owner (or a Financing District) to City in connection with the implementation of the Development Plan shall be refunded to Owner (or the Financing District) to the extent that those fees were paid for any of the following:

- Construction not yet started;
- Construction started, but not yet completed; and
- Onsite or offsite mitigation for the impacts of construction described in the bullet points immediately above.

Notwithstanding the above, no refund or reimbursement shall be required where the City has started, but not yet completed, construction pursuant to a binding written contract between the City and a third party which is not a City-related entity.[10]

Any refunds required by this Section shall be limited to the actual amounts attributable to the Development and/or construction not yet completed or vested at the time of termination. The terms of this Section 8.21 are, by their very nature, intended to survive the termination of this Agreement.

8.22 Amendment to Phasing of Traffic Circulation. Owner may revise the construction phasing of those traffic circulation elements to be constructed by Owner as described in the Development Plan. Such requested revisions by Owner shall be considered minor or insubstantial and shall be deemed consistent with this Agreement provided that:

- The revisions are reasonably acceptable to the City Council;
- The revisions have been the subject of or are exempt from any further legally required environmental review; and
- Applying generally accepted traffic engineering methodology and principles, the revisions do not result in a significant adverse impact on the levels of service, as determined by City, and anticipated in the EIR.

8.23 Affordable Housing. Owner shall satisfy all of its affordable housing obligations by electing to either (i) comply with the AHIP attached as Exhibit C or (ii) dedicate to the City six (6) Net Useable Acres (or, if the Borrego Condition is imposed, four (4) Net Useable Acres) on the terms and conditions set forth in Paragraph E2u(v) of Exhibit B) (the "Affordable Site")

[10] The City's Redevelopment Agency is an example of a "City-related entity."

from within the approximately ten (10) acres of the Property shown on Exhibit C-1[11] (subject to proportionate reduction as set forth below).

If Owner elects to dedicate the Affordable Site, Owner shall (i) deliver to City an irrevocable offer of dedication for the Affordable Site prior to the issuance of the 301st residential building permit for the Project and (ii) deliver[12] the Affordable Site to the City in Superpad Condition no later than the issuance of the 901st residential building permit for the Project. If City does not accept that offer of dedication within ninety (90) days after Owner has delivered the Affordable Site to the City in the condition required by this Agreement, the offer of dedication shall terminate and Owner shall be deemed in full compliance with the AHIP, shall have satisfied all of its affordable housing obligations for the Project, and shall not be obligated to dedicate land or pay in lieu fees for affordable housing.

Owner's offer of dedication for the Affordable Site shall contain a provision permanently restricting the use of the Affordable Site to the development and occupation of Affordable Units and for no other use. Additionally, the Parties shall cooperate to provide access not only to the Affordable Site, but also to any portion of the ten (10) acres of the Property shown on Exhibit C-1 which is not included within the final area dedicated for the Affordable Site.

If fewer than 2,100 residential units are approved with the First Tentative Map, then the amount of land to be conveyed to the City to satisfy this provision shall be reduced proportionately.[13]

If more than 2,100 residential units are approved with the First Tentative Map, then, to satisfy this provision, in addition to the dedication of the Affordable Site, Owner shall either, at Owner's election, (i) increase the land dedicated for the Affordable Site proportionately to the number of units approved in excess of 2,100 or (ii) pay an in lieu fee of $12,000 per residential building permit issued in excess of 2,100.

8.24 Feature Plan Not Required. No Feature Plan (as defined in Section 9.184.020 of the City's Municipal Code) shall be required for all or any portion of the Project.

8.25 Rancho Parkway Road Right-of-Way, Access Road, and Offsite Improvements.

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[11] The actual size of the dedicated property may be greater than four or six acres, as applicable, provided that the number of Net Useable Acres complies with this Section and that all dedicated acres are contiguous.

[12] Any reference within this Agreement to delivery of any property to be dedicated to the City means that by the date scheduled for delivery, Owner shall provide City with written notice that the property is in the condition required by this Agreement and that the City may accept the applicable offer of dedication.

[13] The number of acres will be adjusted proportionately based on the assumption of 2,100 du = 6 A.

8.25.1 *Conveyance from Baker Ranch Properties, LLC.*

IF: By January 21, 2011, Baker Ranch Properties, LLC, which is not a party to this Agreement,[14] has done the following:

(1) Delivered an irrevocable offer of dedication to convey to the City the right-of-way adjacent to the Baker Rancho Parkway Site as depicted on Exhibit I (the "Rancho ROW");

(2) Delivered an irrevocable offer of dedication to convey to the City the right-of-way for the access road as depicted on Exhibit I (the "Access Road ROW");

(3) Offered to provide to the City a temporary access easement as depicted on Exhibit I (the "Access Road Easement Area");

(4) Offered to provide temporary construction licenses (the "Construction Licenses")[15] to allow access to adjacent land owned by Baker Ranch Properties, LLC (the "Construction License Areas") as necessary to complete those offsite road improvements to Rancho Parkway and the Access Road which are identified on Exhibit I (the "Offsite Improvements");

AND:

The City has accepted the irrevocable offers of dedication for both the Rancho ROW and the Access Road ROW within forty-five (45) days after each offer was made by Baker Ranch Properties, LLC;

THEN:

(1) The City shall, without any reimbursement, charge, or condition being imposed at any time on Owner or Baker Ranch Properties, LLC:

(a) Construct the Offsite Improvements;

(b) Fund or cause to be funded all costs of the Offsite Improvements;

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[14] Although not a party to this Agreement, Baker Ranch Properties, LLC, shall be a third-party beneficiary of all provisions of this Agreement related to the Offsite Improvements. As such, Baker Ranch Properties, LLC, shall be entitled to enforce each of those provisions.

[15] The Rancho ROW, Access Road ROW, the Access Road Easement Area, and the Construction License Areas shall be in "as is" condition. The Construction Licenses shall provide for the removal of all buildings and equipment from the Construction License Areas by Baker Ranch Properties, LLC, during the term of the Construction Licenses.

(c) Be solely responsible for obtaining any rights to use property not owned by Baker Ranch Properties, LLC, which may be needed for staging or access in order to complete the Offsite Improvements; and

(d) Complete all Offsite Improvements by the later of (1) two years after the conveyance of the Rancho ROW to the City and (2) December 31, 2012;

AND:

(2) Owner shall remain entitled to the full Sports Park Fee Credit to the extent allowed by paragraphs B2b and B2c of Exhibit B, without any adjustment related to the Rancho ROW, the Access Road ROW, or the Offsite Improvements.

8.25.2 *Additional Access Road Right-of-Way.* Under the circumstances described in Section 8.25.1 above, the City may initially construct the Access Road using both the Access Road ROW and Access Road Easement Area. If within five (5) years of the conveyance of the Access Road ROW the City has not removed the slope area and relocated the Access Road completely within the Access Road ROW, then the Access Road Easement Area shall become additional Access Road ROW (the "Additional Access Road ROW"). The additional Access Road ROW is currently depicted on Exhibit I as the Access Road Easement Area. The Additional Access Road ROW totaling 0.62 acres shall be purchased by the City for an amount of $700,000.[16]

8.25.3 *Rancho ROW, Access Road ROW, Access Road Easement, and Construction Licenses Not Provided.*

IF: By January 21, 2011, Baker Ranch Properties, LLC, has not offered to convey the Rancho ROW, the Access Road ROW, the Access Road Easement, and the Construction Licenses to the City and Owner provides the dedication of the Baker Rancho Parkway Site,

THEN: If the City acquires the Rancho ROW and completes the Offsite Improvements, the Sports Park Fee Credit shall be reduced by (a) the City's acquisition cost for the Rancho ROW and (b) the City's cost of completing the Offsite Improvements, but only to the extent those improvements are described on Exhibit I.

[16] This amount shall increase at the rate of three percent (3%) per year beginning on the Effective Date.

8.26 FCPP Fee Sharing Agreement. The City expects to enter into an "Agreement for Management of the Foothill Circulation Phasing Plan within the City of Lake Forest" with the County to govern, among other things, the ongoing implementation of the Foothill Circulation Phasing Plan ("FCPP") with respect to the Property (the "Fee Sharing Agreement"). This Agreement (i.e., this Development Agreement) is contingent upon the Fee Sharing Agreement becoming effective, incorporating the terms of this Agreement, and including an acknowledgement by the County that the rights and responsibilities of SBRA related to FCPP Fees shall be as set forth in this Agreement. SBRA's responsibilities shall be governed by the following provisions of this Agreement:

8.26.1 *Owner's Remaining FCPP Obligations.* Subject to Sections 8.26.2 and 8.26.3 below, Owner shall pay FCPP fees (the "FCPP Fee") at the rate charged to "Participating Landowners" at the time of the issuance of building permits, as set forth in Exhibit E[17] ("Owner's Remaining FCPP Obligations").[18]

8.26.2 *Owner's FCPP Fee Credit.* Owner is presently entitled to a FCPP Fee credit in the amount of $7,511,634.27. At the time of building permit issuance, Owner shall be entitled to apply this FCPP Fee credit to pay for one-half of the FCPP Fee payable for each Unit in the Project until the FCPP Fee credit is exhausted.

8.26.3 *Assurances Regarding Owner's FCPP Fee Credit.* Owner shall be estopped from asserting that, as of the Approval Date, it has a greater FCPP Fee credit than described in this Section. City agrees that it shall be estopped from asserting that, as of the Approval Date, Owner has a FCPP Fee credit in a lesser amount than described in this Section.

City shall not agree to any amendment of the Fee Sharing Agreement which is not consistent with the provisions of this Agreement and, in particular, the provisions of this Section 8.26.

8.27 Discretionary Permits. Where implementation of the Development Plan requires the City to approve and/or issue a discretionary permit[19] or take other discretionary action, the City shall exercise that discretion in a manner consistent with the General Plan Amendment, the PC Text Amendment, the

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[17] Owner's Remaining FCPP Obligations are subject to any adjustments for increases or decreases in applicable cost indexes to the extent required by the FCPP as of the Approval Date.

[18] This rate is the per unit rate for "Participating FCPP Landowners," "Zone 2," shown in the "City of Lake Forest Revised Road Fee Programs Schedules Effective July 1, 2009"

[19] Such as, for example, those set forth in Section 9.184.020 of the City's Municipal Code.

First Tentative Map, and any other Subsequent Development Approval. Owner may waive this provision in writing.

9. PUBLIC BENEFITS.

9.1 Intent. This Agreement is entered into by the City in consideration of, and in exchange for, Owner's agreement to contribute to the Public Benefits.

9.2 Public Benefits. The Public Benefits[20] consist of Owner's contributions, as described in Exhibit B, toward land, improvements, and funding to further the development of (a) the "Public Facilities" (consisting of the City Facilities, the LFTM Improvements, the Neighborhood Parks, and the Alton Segment), and (b) the School Facilities (collectively, "Owner's Facilities Obligations"). Owner's Facilities Obligations are, however, contingent upon the City forming one or more Financing Districts, if requested by Owner to do so (see Section 9.3 below), and causing such Financing District(s) to timely issue bonds sufficient to fund, to the extent requested by Owner, the acquisition, design, development, maintenance (where applicable under appropriate law), and other associated costs related to the development of the Public Facilities.

9.2.1 *Community-Wide Benefit.* While a portion of the Public Benefits will be provided specifically to mitigate the impacts of the Project, certain of the Public Benefits will serve the community at large. For example, the scope of the LFTM Improvements is greater than required to mitigate the traffic impacts of the projects within the Opportunities Study Area. As a result, Owner's contributions toward the LFTM Improvements through payment of LFTM Fees exceeds Owner's fair share of the actual cost of mitigating the traffic impacts of development within the Opportunities Study Area and thus serve as additional consideration for this Agreement.

9.2.2 *Advancement of Funds to Design City Facilities.* Owner acknowledges the importance of making the City Facilities available for use as soon as possible following execution of this Agreement, and further acknowledges that the timing and phasing of development within the Opportunities Study Area may not provide the City with adequate funding for the acquisition of land for the City Facilities and design of the City Facilities soon enough to allow the City Facilities to be timely constructed and available for use. Therefore, Owner shall make available to the City One Million Dollars ($1,000,000.00) ("Owner's Share of Design Budget") to fund Owner's share of the design costs for the Sports Park, and Community Center (as described in Exhibit B). Owner shall not be

[20] The Public Benefits described in Exhibit B include not only obligations of Owner, but, as part of a complex plan to deliver to the community road and park improvements earlier than would otherwise be possible, reciprocal obligations of the City to facilitate those early improvements.

obligated to tender such advance of funds until City has contracted with consultants to provide design services for the Sports Park or Community Center. Owner's contribution will be made in four equal installments of $250,000 each, with the first being due on the fifth day after the Effective Date and the remaining three installments being due every three months until paid in full. For each payment made, Owner shall receive a City Facilities Fee credit in the full amount of the payment. This credit shall be reflected in any Fee Credit Statement prepared pursuant to Paragraph B3b of Exhibit B.

9.3 Financing Public Facilities. At the City's discretion, Owner's Facilities Obligations may be financed through the use of one or more Financing Districts, subject to this Section 9.3. Any Financing District formed is subject to the Financing District Policy (as defined in Section 5.60 above), which, in turn, is subject to the specific interpretation and waivers of the Financing District Policy set forth in this Section.

9.3.1 *Formation of Financing Districts*. Owner may request the formation of a Financing District, which may include multiple improvement areas, to finance Owner's Facilities Obligations. To make that request, Owner shall submit to the City a petition to form the Financing District pursuant to Government Code Section 53318(c) concurrently with the Owner's submittal of the first Final Map for development purposes. Owner's submittal must comply with the Financing District Policy, including provisions, if any, related to the maximum total effective tax rate on the Property. Upon that submittal, City shall use its best efforts to conduct proceedings to consider formation of the Financing District consistent with State law. Proceedings for formation of the Financing District and of improvement areas of the Financing District shall commence concurrently with the submittal of the Final Map for development purposes and formation of multiple Financing Districts or improvement areas shall be phased in a manner consistent with the Public Facilities Phasing and Financing Plan that is submitted with the First Tentative Map application and each Financing District or improvement area shall be formed in a manner consistent with each phased Final Map. The Parties shall cooperate so that, to the extent possible, the associated public process and the resolution of intention to form the Financing District, and any improvement areas thereof, in each case, shall be adopted by the City Council before the issuance of the first residential building permit for construction of vertical improvements (other than for model homes for development areas within the Financing District) on the Property within such Financing District, or related improvement area, or as soon thereafter as the City may reasonably schedule and notice such hearing, taking into account its City Council meeting schedule. This provision shall not, however, delay the issuance of any

building permit requested by Owner within such Financing District, or related improvement area. The Parties shall continue to cooperate so that the resolution of formation and conduct of the landowner election of the Financing District, or improvement area thereof, as applicable, is adopted prior to the issuance of a certificate of occupancy for any residence within the Financing District, or improvement area thereof, as applicable, the Parties using such reasonable efforts not to delay the issuance of such certificates of occupancy.

Notwithstanding any other provision of this Agreement, the City shall not form a Financing District encumbering some or all of the Property without the prior written consent of Owner. Upon the formation of the Financing District, the City shall use its best efforts to issue bonds upon the request of Owner and in cooperation with Owner. The City shall cooperate with Owner to determine the timing and size of the proposed bond issuances and each such bond issue shall comply with the Financing District Policies of the City except as such policies are waived or modified by Section 9.3.8 or further modified or waived by action of the City Council. To the extent that a Financing District is established, the details of Owner's participation in that Financing District and the manner of construction and acquisition of the public facilities shall be addressed and reasonably agreed to in a separate agreement between the City and Owner, to which other OSA Landowners may also be parties if both the City and Owner so agree.

9.3.2 *Formation Costs.* Owner shall advance funds to pay all costs for formation of the Financing District and the issuance and sale of bonds by the Financing District, including, but not limited to, (i) the fees and expenses of any consultants and legal counsel to the City employed in connection with the formation of the Financing District and issuance of the bonds, including an engineer, special tax consultant, financial advisor, bond counsel, and any other consultant deemed reasonably necessary or advisable by the City, (ii) the costs of appraisals, market absorption and feasibility studies and other reports deemed reasonably necessary or advisable by the City in connection with the issuance of the bonds, (iii) the costs of publication of notices, preparation and mailing of ballots and other costs related to any hearing, election or other action or proceeding undertaken in connection with the formation of the Financing District and issuance of the bonds, (iv) reasonable charges for City staff time incurred in connection with the formation of the Financing District and issuance of the bonds, and (v) any and all other actual and reasonable costs and expenses incurred by the City in connection with the formation of the Financing District and issuance of the bonds. Charges for staff time will be determined

using the City's standard overhead rates applicable to all projects as set forth in the City Wide User Fee and Rate Study dated February 2008. The City shall endeavor to involve only those staff members whose expertise or attendance at meetings is necessary for a particular task. To the extent that one or more OSA Landowners other than Owner is participating in the Financing District, Owner's advance obligation shall be in the same proportion to the overall required advance for the Financing District as the midpoint of the range of Residential Units allowed by the General Plan Amendment in the Project is to the midpoint of the range of Residential Units allowed by the General Plan Amendment for the OSA Landowners participating in the Financing District. Upon completion of the formation of the Financing District and successful sale of the bonds, funds advanced for such formation and issuance costs by Owner shall be reimbursed to Owner from the bond proceeds concurrently with the issuance of the bonds.

9.3.3 *Security*. If any of Owner's Facilities Obligations which are contemplated to be funded by the Financing District become due before bond proceeds are available to satisfy those obligations, then Owner shall either (1) pay the corresponding required fees (i.e., FCPP Fee, City Facilities Fee, LFTM Fee) concurrent with the building permit application applied for and based upon the number of building permits applied for in such application or (2) provide cash or a letter of credit, reasonably acceptable to the City, to satisfy such corresponding required fees until bond proceeds become available (at which time such cash or letter of credit will be released to Owner). City shall immediately have the right to draw on such cash or letter of credit at any time that such cash is required to pay for the improvement for which it is collected and after it is provided for its purposes hereunder. If Owner provides cash pursuant to the foregoing provisions, then the City may request that Owner enter into a deposit agreement for such required fees as may be directed by bond counsel to the City. Owner may elect to fund some or all of Owner's Facilities Obligations before bond proceeds are available for payment and/or reimbursement. If Owner so elects or if City draws on cash or a letter of credit as provided above, then Owner shall be reimbursed from bond proceeds as soon as reasonably practicable after the issuance thereof.

9.3.4 *Issuance of Bonds.* Upon the formation of the Financing District, City shall use its best efforts to issue bonds upon the written request to do so by Owner. City shall levy special taxes or assessments on any portions of the Property according to the rates and methods of apportionment. Bond sizing and timing shall be determined by the City in cooperation with Owner, and City shall

take into consideration Owner's plan and phasing of development. If City is ready, willing, and able to issue bonds, but Owner requests that their issuance be delayed temporarily or indefinitely, City shall comply with that request and Owner's Facilities Obligations shall remain in effect. Owner shall post cash or other security pursuant to 9.3.3 if Owner's Facilities Obligations are then due and Owner shall pay all costs incurred with respect to the bond financing so delayed or deferred (with such costs being reimbursed to Owner upon the occurrence of the bond issuance). If Owner subsequently requests (in one or more requests at Owner's discretion) the issuance of bonds up to the full extent of the bonding capacity of the Financing District, City shall use its best efforts to comply with that request. Except as modified or waived within this Agreement or subsequent action by the City Council, the issuance of bonds shall comply with the Financing District Policy. The bonds may be sold in one or more series, and with respect to one or more improvement areas, as determined by the City in cooperation with Owner.

9.3.5 *City's Failure to Form Financing District or Issue Bonds as Requested.*

IF:

(1) Within ninety (90) days after Owner's submittal to the legislative body of the City (with a copy to the City Attorney's office) of its petition to form the Financing District pursuant to Government Code §53318(c) (the "Submittal Date"), City has not formed the requested Financing District consistent with Financing District Policy and Owner's request as to the scope and bonding capacity (i.e., financed costs and bond sale amount) of each requested Financing District and each improvement area as stated in the petition for any reason, without exception, other than (a) Owner's filing a majority protest against formation of the Financing District, (b) reasonable negotiation of the Rate and Method of Apportionment in good faith pursuant to Section 9.3.6 hereof or (c) any delay at the request of Owner, or

(2) City either (i) fails to complete all actions necessary to both form the Financing District and issue bonds sufficient to fund Owner's Facilities Obligations in an amount supported by the rate and method of apportionment, the City's Financing Policy (as modified within this Section 9.3 or as expressly agreed to by the City after the Approval Date), and market conditions when the first

of those obligations become due[21] as a result of City action or inaction[22], or (ii) before the issuance of bonds, causes or permits any Financing District to levy any tax or assessment on any portions of the Property for which a building permit has not yet been issued,

THEN: This Agreement shall remain in full force and effect, but the respective obligations of the Parties shall be modified as follows:

(a) All of Owner's City Facilities Fees obligations under this Agreement shall terminate;

(b) Within 120 days after the Submittal Date or thirty (30) days after the failure set forth in Subparagraph (2) above, as applicable, the City shall reimburse Owner for all City Facilities Fees paid by Owner which have neither (i) been spent on City Facilities nor (ii) become contractually committed by the City for City Facilities costs actually incurred[23] before the termination of Owner's City Facilities Fees obligations pursuant to this Agreement;

(c) Owner shall be relieved of all obligations to dedicate land for the City Facilities;

(d) Within 150 days after the Submittal Date or sixty (60) days after the failure set forth in subparagraph (2) above, as applicable, City shall either, at Owner's sole election, (i) reimburse Owner at Fair Market Value[24] for any land previously dedicated under this Agreement to be used for the City Facilities or (ii) if the City has not commenced construction on, or otherwise encumbered, the dedicated property, reconvey[25] the dedicated property to Owner with

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[21] The Parties agree that delays resulting from requests of Owner that are inconsistent with, or modifications to, the Financing District Policy (as modified within this Section 9.3 or as expressly agreed to by the City after the Approval Date) shall extend the time for the City to take the actions contemplated by this subparagraph for a period equal to the amount of such delay resulting from such requests, including reasonable time for City staff to consider such requests.

[22] "City action or inaction" includes, but is not limited to, actions of, or failure to act by, City staff, the City Council, and/or departments and agencies of the City related to the formation and/or financing. "City inaction" does not include market conditions that prevent the issuance of bonds by the Financing District.

[23] Costs "actually incurred" are those representing work actually performed, as opposed to future work which is the subject of a then-existing contract. The City may elect to avoid contractual obligations for work to be performed after the date of the termination provided in Subparagraph (a) by making provision in each construction contract for a termination of that contract upon the occurrence of the termination provided in Subparagraph (a).

[24] For purposes of this Section, Fair Market Value shall be determined as of the date the City accepted the offer of dedication.

[25] The offer of dedication shall contain a provision referencing the potential for this reconveyance.

title in the same condition as it was on the date Owner dedicated such property to the City. If any land previously dedicated under this Agreement was intended to be used for the Sports Park facilities (being a park or regional benefit to the City, and not a neighborhood park) and is not reconveyed to Owner pursuant to subsection (ii) above, then the provisions of Section 9.3.5(g) below shall be null and void;

(e) Any offers of dedication for land to be used for City Facilities which had not been accepted as of the date of Owner's submittal of the applicable request to form the Financing District shall immediately terminate and City shall immediately record any necessary documents to cause such offers of dedication to no longer be of record;

(f) All other Owner's Facilities Obligations shall remain in full force and effect, including Owner's obligation to make the Alton IOD to City pursuant to Exhibit B; and

(g) Subject to the last sentence of Section 9.3.5(d) above, City shall have the option to purchase up to eighteen (18) acres of land which are graphically depicted in Exhibit L (the "Park Option Site") at a price of $6.90 per square foot[26] , to be delivered in "as is" condition without warranty (the "Park Option"). The Park Option is subject to both (1) the City providing Owner, no later than 180 days after the Submittal Date, written notice of City's election to exercise the Park Option and (2) the City performing all other acts to be performed on its part to complete acquisition of the Park Option Site pursuant to the Park Option within 210 days after the Submittal Date. The Park Option may not be assigned by the City to any third party. Owner's conveyance of the Park Option Site to City shall be subject to restrictions limiting the use of the Park Option Site to park and open space purposes in perpetuity.

9.3.6 *Rate and Method of Apportionment.* The Parties recognize that the rate and method of apportionment of the special taxes and other parameters of each separate improvement area within such Financing District cannot be completed in advance of the formation of the Financing District. In recognition of the necessity of forming

[26] The per square foot cost of the Park Option Site shall be adjusted as of the date of sale to reflect changes from June 30, 2007, in the Consumer Price Index for All Urban Consumers, Los Angeles-Riverside-Orange County, CA, Metropolitan Area, as published by the United States Department of Labor, Bureau of Labor Statistics.

a Financing District with separate improvement areas and selling bonds to the Project's financial viability, Owner and the City shall, in good faith, negotiate the rate and method of apportionment of special taxes and other parameters of each separate improvement area within the Financing District prior to the formation of the Financing District or such improvement area, consistent with the Financing District Policy. Additionally, Owner and the City shall, in good faith, negotiate the timing of issuance and amount of any bonds to be issued by any of the separate improvement areas within the Financing District before those bonds are issued. While the Parties recognize that the actual sale and delivery of the bonds of each separate improvement area within the Financing District are subject to market constraints and limitations that are outside the control of the City, the provisions of Section 9.3.5 above shall still apply.

9.3.7 *Existing Financing Districts*. The Property is currently subject to the Existing Financing Districts. The City shall, in good faith, use its best efforts to work with the County of Orange to restructure bonds previously issued by The Existing Financing Districts and the special taxes relating to The Existing Financing Districts as part of the formation of any new Financing District on the Property. Upon the formation of the proposed Financing District, City agrees to cooperate with Owner to oppose the issuance of additional bonds in The Existing Financing Districts unless such issuance by the County is agreed to by Owner in writing.

9.3.8 *Financing District Policy Waivers*. The City may, in its discretion and to the extent permitted by law, waive any of the provisions of the Financing District Policy in particular cases. The City agrees to waive the following provisions with respect to Financing District to be formed pursuant to this Agreement, and all references within this Agreement to application of the "Financing District Policy" to the Project shall assume these waivers to be in place:

9.3.8.1 The Financing District Policy provides that a project's useful life must exceed the term of the financing and that the life of the project or asset to be financed must be ten (10) years or longer. The City waives this provision for the Project to allow the Project, provided that the life of some equipment relating to the facilities to be financed complies with the Mello-Roos Community Facilities District Act (the "Mello-Roos Act"); provided, however, that the average useful life of all financed facilities is equal to or greater than the weighted average maturity of the bonds.

9.3.8.2 The Financing District Policy provides that all property not otherwise exempted by the Mello-Roos Act from taxation shall be subject to the special tax, with limited exemptions. The City waives this provision for the Project so that, upon request by Owner, exemptions from the special tax shall be provided in the rate and method of apportionment based upon the use of such property and its demand on the Public Facilities.

9.3.8.3 The Financing District Policy provides for an amount equal to twenty-four (24) months of capitalized interest when one entity has land holdings responsible for ten percent (10%) or more of debt service. The City waives this provision for the Project to allow such variations with respect to landowner interest and reduction or allocation of capitalized interest as recommended by the City's Underwriter.

9.3.8.4 In addition to the items expressly waived above, the City agrees to consider, in good faith, other waivers to the Financing District Policy based upon the market requirements at the time of the issuance of the applicable bonds by the relevant Financing District. Any future waivers must be approved by resolution of the City Council.

9.3.9 *Funding Priorities*. The Financing District Policy provides a non-exclusive list of specific improvements that may be financed through a Financing District. That list includes, but is not limited to, the Sports Park, Community Center, City Hall, Neighborhood Parks, traffic mitigation and arterial street improvements (such as Alton Parkway, Commercentre Drive, and Rancho Parkway), and other capital facilities and services eligible under the Mello-Roos Community Facilities Act of 1982 (the "Act") and approved by the City Council. By approving this Agreement, the City Council has determined that each of the following improvements is eligible under the Act and the Financing District Policy and may be funded through a Financing District formed pursuant to this Agreement. Additionally, any such funding shall be expended in the following priority order (the "Priority List"): (1) Owner's Remaining FCPP Obligations; (2) LFTM; (3) improvements for portions of Commercentre located on the Property; (4) the City Facilities Fee; (5) improvements for Rancho Parkway and/or for the portion of Alton Parkway not encompassed by the FCPP program, (6) Neighborhood Park improvements, and (7) payment due Owner for dedication of an Onsite Sports Park Site as required by Section 9.3.10 below.

Owner and City may modify the Priority List from time-to-time by written agreement. Such modifications shall not be considered amendments to this Agreement. If Owner and City modify the Priority List, but the Financing District issues bonds sufficient to timely fund the entirety of Owner's obligations in connection with the acquisition, design, development, maintenance (where applicable under appropriate law), and other associated costs related to the development of the Public Facilities, then the obligations with respect to the issuance of bonds by the Financing District and Owner's City Facilities Fee obligations will be deemed satisfied.

9.3.10 *Consideration for Land Dedication.* This Agreement obligates Owner to make certain dedications of land to the City for the Sports Park. Subject to the availability of funds from Financing Districts, if the Sports Park is to be located within the Property, Owner shall be reimbursed by the Financing District for dedication of an Onsite Sports Park Site in an amount equal to the Fair Market Value of the Onsite Sports Park Site as calculated no more than 120 days prior to the date of reimbursement, less any City Facilities Fee Credit received by Owner pursuant to Paragraph B2e of Exhibit B.

9.4 Reimbursement Agreement. Pursuant to Government Code Section 53314.9, the City may accept advances of funds or work-in-kind from any source, including, but not limited to, private persons or private entities, and may provide, by resolution, for the use of those funds or that work-in-kind for any authorized purpose, including, but not limited to, payment of costs incurred by the City in creating a Financing District. The City Council may enter into an agreement, by resolution, with the person or entity advancing the funds or work-in-kind to reimburse that person or entity for all or a portion of the funds advanced, provided that certain requirements are satisfied. City and Owner desire that this provision serve as an agreement that Owner shall be reimbursed for all funds and work-in-kind advanced by Owner pursuant to this Agreement and shall be eligible for reimbursement under the Financing District Policy. The City and Owner shall take all steps within their power to meet the requirements of Government Code Section 53314.9. In addition, the Parties shall enter into any additional agreements on a timely basis needed to allow such reimbursements to occur.

9.5 Independent Nature of Obligations. Owner's Facilities Obligations are independent of the obligations of any other OSA Landowner or any other property which the City intends to participate in providing some or all of the Public Facilities. Provided that Owner satisfies Owner's Facilities Obligations and is not in Major Default, Owner's Vested Right to complete the full development of the Project shall not be limited, diminished, or otherwise adversely affected by the failure of any other landowner or property to make their respective contributions to the Public Facilities as anticipated by the

City. Similarly, the City's obligations to Owner and the Property are independent of the City's obligations to any other property or landowner. However, the Public Facilities have been defined in Exhibit B and Owner's Facilities Obligations are based on the overall development of the OSA by all OSA Landowners. Thus, to the extent that the City reduces the City Facilities Fee for any other OSA Landowner, such that such other OSA Landowner's per-Unit City Facilities Fee is less than Owner's per-Unit City Facilities Fee, the City shall reimburse Owner for the difference, irrespective of whether the amount reimbursed was originally paid to City by Owner or an Assignee (see Section 13.3). However, no such reimbursement shall be allowed for any difference in City Facilities Fee credits received by any other OSA Landowner for the dedication of land for Public Facilities in the Opportunities Study Area. Owner acknowledges that the provisions of this Section shall not apply to any fee the amount of which is not controlled by the City, such as fees paid to the Saddleback Valley Unified School District, the County of Orange, and/or any other government agency. The terms of this Section 9.5 are, by their very nature, intended to survive the termination of this Agreement.

10. ANNUAL REVIEW.

10.1 Timing of Annual Review. Pursuant to Government Code Section 65865.1, at least once during every twelve (12) month period of the Term, City shall review the good faith compliance of Owner with the terms of this Agreement ("Annual Review").

10.2 Standards for Annual Review. During the Annual Review, Owner shall be required to demonstrate good faith compliance with the terms of this Agreement. If the City Council or its designee finds and determines, based on substantial evidence, that Owner is not in good faith compliance, then City may proceed in accordance with Section 12 pertaining to the potential Default of Owner and the opportunities for cure. Owner shall pay to City a fee of Two Thousand Five Hundred Dollars ($2,500) to cover the reasonable costs incurred by City in connection with the Annual Review. This fee shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers for the Los Angeles-Riverside-Orange County Metropolitan Area, as published by the United States Department of Labor, Bureau of Labor Statistics, from the date of the previous Annual Review.

10.3 Procedures for Annual Review. The Annual Review shall be conducted by the City Council or its designee. Owner shall be given a minimum of sixty (60) days' notice of any date scheduled for an Annual Review. Owner shall not be limited in the information it presents to the City Council for the Annual Review and may, if needed, provide information to the City Council in the first instance at the City Council hearing on the Annual Review. Should the City Council designate a party other than itself to conduct the Annual Review, these same notice and procedural requirements shall apply to the conduct by

the designee of the Annual Review. The failure of the City to conduct an Annual Review shall not be a Default of Owner.

10.4 Certificate of Compliance. At any time during any year that the City Council or its designee finds that Owner is not in Default under this Agreement or upon completion of the Project in accordance with the terms of this Agreement, City shall, upon written request by Owner, provide Owner with a written certificate of good faith compliance within fifteen (15) days of City's receipt of that request.

11. THIRD PARTY LITIGATION.

11.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan, as amended by the General Plan Amendment. Owner has reviewed the General Plan and concurs with City's determination. Neither Owner nor City shall have any liability under this Agreement or otherwise for any failure or inability of either of them to perform in any respect under this Agreement, if such failure or inability is the result of a judicial determination that part or all of the General Plan is invalid, inadequate, or not in compliance with law.

11.2 Third Party Litigation Concerning Agreement.

11.2.1 *Indemnification.* Owner shall indemnify and hold harmless the City, its elected and appointed officials, officers, employees, consultants, agents, and attorneys from and against any third-party claim, action, or proceeding to attack, set aside, void, or annul the approval of this Agreement, the certification of the EIR for the Project[27], the General Plan Amendment, the PC Text Amendment, or any Subsequent Development Approval (a "Claim"). Within three (3) business days after receiving or being notified of a Claim, City shall notify Owner of the Claim. City shall cooperate fully in Owner's defense against the Claim. Should City fail to either promptly notify Owner of the Claim or cooperate fully in the defense against the Claim, Owner's obligations under this Section 11.2.1 shall terminate as to that Claim. This indemnity shall not extend to any Claim to the extent that the Claim is based on the sole or active negligence or willful misconduct of the City.

11.2.2 *Duty to Defend.* Owner shall defend City against all Claims at Owner's expense with legal counsel reasonably approved by City. With respect to any Claim, if Owner asks City to participate in the

[27] If a Claim is brought under CEQA and that Claim pertains to projects within the Opportunities Study Area in addition to the Project, Owner's indemnification obligation shall be limited to a fair share contribution equal to the percentage which the total number of Residential Units approved pursuant to Section 8.7 above bears to the total number of residential dwelling units approved for the Opportunities Study Area, including the Project, which are potentially subject to the Claim.

defense against that Claim, City shall participate. Even if not requested to do so by Owner, City may elect to participate in the defense of any Claim. Under either circumstance, (i) City may select legal counsel reasonably approved by Owner to represent City in that defense and (ii) subject to the limitations set forth in Section 11.6 below, Owner shall reimburse City for the reasonable cost of that defense.

11.2.3 *Owner's Option to Not Defend.* With respect to any Claim, Owner may choose to not defend against the Claim or to terminate a defense after that defense has been initiated. If Owner declines to defend against a Claim, the City shall not defend against that Claim and Owner shall indemnify City for any losses arising from that Claim as provided in Section 11.2.1 above.

11.2.4 *Cooperation and Cost Control.* The Parties shall reasonably cooperate with each other and their respective counsel in defending against any Claim, including in the preparation of any applicable administrative record, the coordination of pleadings and briefs filed in the course of litigation, and the control of costs, expenses, and fees incurred in defending against a Claim. Among other reasonable means of controlling litigation costs, expenses, and fees, in any action involving a Claim for which Owner is indemnifying City, counsel for Owner shall be deemed lead counsel and counsel for the City shall avoid any duplication of legal services or other costs or expenses. The Parties shall agree to cooperate in the preparation of any required administrative record in a reasonable and cost effective manner and shall consult with each other in good faith to ensure that unnecessary costs are not incurred in defending against a Claim.

11.3 Additional Indemnity. In addition to the provisions of Section 11.2, Owner shall indemnify and hold City, its officers, agents, employees and independent contractors, engaged in project planning or implementation, free and harmless from any third-party liability or claims based or alleged upon any act or omission of Owner, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury or death (Owner's employees included) or any other element of damage of any kind or nature, relating to or arising from development of the Project, except for and to the extent of claims for damages arising through the active negligence or willful misconduct of City, its officers, agents, employees, and independent contractors. Owner shall defend, at Owner's expense, including attorneys' fees, City, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions of Owner. City may in its discretion and at its own expense participate in the defense of any such claim, action or proceeding.

11.4 Mutual Indemnification. This Agreement creates rights and obligations for each of the Parties, most of which are subject to one or more conditions.[28] It also provides for the granting of licenses and easements which will allow one Party to enter and perform work on the real property of the other Party. With respect to any such right or obligation which involves land preparation or construction and irrespective of the ownership of the property on which the land preparation or construction activity takes place, each of the Parties agrees to indemnify, defend, and hold the other Party harmless from and against any damage, injury, cost, expense, liability, demand, or claim (collectively, "Claims") arising from the indemnifying Party's actions or omissions, whether intentional or negligent, in performing that land preparation or construction. The indemnifying Party shall not be liable for any portion of a Claim which is the result of the other Party's intentional or negligent conduct. This indemnification extends to Claims arising from the following:

- The death of or injury to any person;
- Damage to or loss of personal or real property, including to any improvements to or on real property; and
- Where one Party (the "Working Party") is performing work under or subject to a permit, certification, or authorization (collectively, a "Permit") issued to the other Party (the "Permitted Party"), any financial expense, including fines, penalties, restoration costs, and attorneys fees, imposed on, assessed against, or incurred by the Permitted Party as a result of the Working Party's failure to comply with any condition or requirement, including mitigation requirements, of the Permit.[29]

11.5 Environmental Contamination. Owner shall indemnify and hold City, its officers, agents, and employees free and harmless from any liability, based or alleged, upon any act or omission of Owner, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns, and independent contractors, resulting in any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under, or about the Property, including, but not limited to, soil and groundwater conditions. Owner shall defend, at Owner's expense, including attorneys' fees, City, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. City

[28] Purely as examples, for Owner these rights include Owner's Vested Right and these obligations include the construction of the Borrego Improvements, and for the City these rights include the right to construct City Alton and these obligations include completion of the Offsite Improvements related to the Ranch ROW.

[29] An example of a "Permit" to which this provision applies is the Section 401 Water Quality Standards Certification for the Baker Ranch Planned Community that the Parties expect to be issued by the Santa Ana Regional Water Quality Control Board in connection with the Corps of Engineers' Section 404 permit and under which the City will perform work related to the construction of City Alton.

may in its discretion participate in the defense of any such claim, action, or proceeding, but must assume its own costs in participating in such defense. Notwithstanding anything to the contrary set forth in this Section, Owner shall not be responsible for clean-up and removal of groundwater contamination (or soil contamination caused by groundwater contamination) migrating to or from an adjacent property not owned by Owner.

11.6 City to Approve Counsel; Conduct of Litigation. With respect to Sections 11.2, 11.3, and 11.5, City reserves the right to either (a) approve the attorney(s) that Owner selects, hires, or otherwise engages to defend City, which approval shall not be unreasonably withheld or delayed, or (b) if Owner is not in agreement with any disapproval[30] of counsel by City, City may conduct its own defense. If City elects to conduct its own defense, Owner shall reimburse City for a fraction of all reasonable attorneys fees and court costs incurred for such defense, which fraction shall be equal to the number of Residential Units allowed for the Project by City Council in compliance with the General Plan Amendment, divided by the aggregate number of Residential Units permitted by City Council within the Opportunities Study Area if such action involves more than one OSA Landowner. To the extent that one or more OSA Landowners does not timely pay its full share of attorneys fees and court costs, the City reserves the right to reduce or abandon its defense of any litigation, provided that Owner may, but shall not be required to, tender funds to the City to make up any shortfall. In that instance, City shall assign to Owner City's right to collect the non-paying OSA Landowner's share of attorneys' fees. Owner shall have the right to audit all billings for such fees and expenses. City shall not have the right to approve counsel selected by Owner to represent Owner's interests in any litigation. In any joint defense between the City and Owner of matters arising under this Agreement, City shall cooperate fully with Owner's counsel.

11.7 Processing During Third Party Litigation. The filing of any third party lawsuit(s) against City or Owner relating to this Agreement, the General Plan, other Existing Land Use Regulations, any Development Approvals, including Subsequent Development Approvals, or other development issues affecting the Property shall not excuse or delay or stop the development, processing, or construction of the Project, approval of Subsequent Development Approvals, or issuance of "Ministerial Approvals" by the City unless the third party obtains a court order preventing the activity or invalidating this Agreement. City shall not stipulate to the issuance of any such order without Owner's prior written consent. For purposes of this Section, the term "Ministerial Approvals" shall mean the issuance of approvals or permits requiring the determination of conformance with Land Use Regulations and Development Approvals, including, without limitation, site plans, site development permits, Area Plans, design review, development plans, land

[30] Any disapproval by City shall include a written explanation of the reason for the disapproval.

use plans, grading plans, improvement plans, building plans and specifications, ministerial issuance or approval of one or more Final Maps, zoning clearances, grading permits, improvement permits, stormwater management plans, wall permits, building permits, lot line adjustments, conditional and temporary use permits, certificates of use and occupancy, approvals, entitlements, and related matters as may be necessary for the completion of the Project.

11.8 Survival. The provisions of Sections 11.1 through 11.7 inclusive, shall survive the termination, cancellation, or expiration of this Agreement.

12. DEFAULTS AND REMEDIES.

12.1 Major and Minor Defaults. There are two categories of Defaults under this Agreement: Major Defaults and Minor Defaults (see definitions in Sections 5.73 and 5.75, respectively). Only a Major Default may establish cause for early termination of this Agreement by the non-defaulting Party. Either Party may pursue other non-termination remedies permitted by this Section 12 for Minor Defaults.

12.2 Notice and Termination. Before either Party may declare a Default or termination of this Agreement due to a Major Default or bring legal action to terminate this Agreement, the procedures of this Section must be followed. In the case of a Major Default declared as a result of the conduct of an Annual Review, the procedures of this Section shall constitute a second and independent review of the good faith compliance of Owner.

The Party asserting a Default (the "Non-Defaulting Party") may elect to do so by providing written notice to the Party alleged to be in Default (the "Defaulting Party") setting forth the nature of the Default and the actions, if any, required by the Defaulting Party to cure the Default. The Defaulting Party shall be deemed in Default if the Defaulting Party fails to cure the Default within thirty (30) business days after the delivery of such notice (for monetary defaults) or within sixty (60) business days after the delivery of such notice (for non-monetary defaults) ("cure periods"). If the nature of the alleged Default is such that it cannot reasonably be cured within the applicable cure period, the Defaulting Party shall not be deemed to be in Default if it has commenced efforts to cure the Default within the applicable cure period and continues to diligently pursue completion of the cure.

12.3 Default Remedies. A Non-Defaulting Party who complies with the notice of Default and opportunity to cure requirements of Section 12.2 may, at its option and after the expiration of the applicable cure period and the Defaulting Party's failure to cure after notice, all as provided in Section 12.2, institute legal action to cure, correct, or remedy the alleged Default, enjoin any threatened or attempted violation, enforce the terms of this Agreement by specific performance, or pursue any other legal or equitable remedy.

These remedies shall be cumulative to all other remedies available at law or in equity, rather than exclusive, except as otherwise provided by law.

Furthermore, after first following the procedures set forth in Section 12.2 and only if, after expiration of the cure period provided by Section 12.2, the Defaulting Party fails to cure after notice as provided in Section 12.2, the City may give notice of its intent to terminate or modify this Agreement for an uncured Major Default, in which event the matter shall be scheduled for consideration and review by the City Council, using the notice and procedure provisions set forth in Section 10.3 for an Annual Review. The "preponderance of evidence" standard of review set forth in Section 12.4, however, shall be employed rather than the substantial evidence standard set forth in Section 10.2.

12.4 Standard of Review. Other than in the isolated circumstance of an Annual Review described in Section 10.2 above, any determination by City that Owner is in Default shall be based on the preponderance of evidence before the City. In any legal action by Owner challenging the City's determination of Default, the court shall conduct a de novo review of Owner's compliance based on the administrative record and determine if the preponderance of evidence supports the City's determination.

12.5 Owner's and City's Exclusive Remedy Regarding Development Plan. City and Owner acknowledge that neither City nor Owner would have entered into this Agreement if it were to be liable in damages under or with respect to all or any part of the Development Plan. Accordingly, except as stated below, neither Party shall sue the other for damages or monetary relief for any matter related to the Development Plan. City, however, may sue Owner for the payment of sums due from Owner to City under provisions of this Agreement which are specifically and expressly stated to survive termination of this Agreement (see Section 7.4.3). Owner may sue City for the non-performance of its obligations under the LFTM Program. With these exceptions, the Parties' litigation remedies shall be limited to declaratory and injunctive relief, mandate, and specific performance.

12.6 Waiver; Remedies Cumulative. All waivers of performance must be in a writing signed by the Party granting the waiver. There are no implied waivers. Failure by City or Owner to insist upon the strict performance of any provision of this Agreement, irrespective of the length of time for which such failure continues, shall not constitute a waiver of the right to demand strict compliance with this Agreement in the future.

A written waiver affects only the specific matter waived and defines the performance waived and the duration of the waiver. Unless expressly stated in a written waiver, future performance of the same or any other condition is not waived.

A Party who complies with the notice of Default and opportunity to cure requirements of Section 12.2, where applicable, and elects to pursue a legal or equitable remedy available under this Agreement does not waive its right to pursue any other remedy available under this Agreement, unless prohibited by statute, court rules, or judicial precedent.

Delays, tolling, and other actions arising under Section 14.10 shall not be considered waivers subject to this Section 12.6.

12.7 Alternative Dispute Resolution. Any dispute between the Parties may, upon the mutual agreement of the Parties, be submitted to mediation, binding arbitration, or any other mutually agreeable form of alternative dispute resolution. While an alternative dispute process is pending, the statute of limitation shall be tolled for any claim or cause of action which either of the Parties may have against the other.

13. ENCUMBRANCES, ASSIGNMENTS, AND RELEASES.

13.1 Discretion to Encumber. This Agreement shall not prevent or limit Owner, in any manner, and at Owner's sole discretion, from encumbering some or all of the Property or any improvement on the Property by any mortgage, deed of trust, or other security device to secure financing related to the Property or the Project.

13.2 Mortgagee Protection. City acknowledges that a Mortgagee may require certain interpretations and modifications of this Agreement. City shall, at any time requested by Owner or Mortgagee, meet with Owner and representatives of the Mortgagee to negotiate in good faith the required interpretation or modification. City will not unreasonably withhold or delay its consent to any requested interpretation or modification ("Mortgagee Accommodation") provided such interpretation or modification is consistent with the intent and purposes of this Agreement. City shall also execute a Mortgagee Accommodation in connection with the refinance or extension of any loan for which a Mortgagee Accommodation has previously been executed. Any Mortgagee shall be entitled to the following rights and privileges:

13.2.1 Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value.

13.2.2 If City timely receives a request from a Mortgagee requesting a copy of any notice of Default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of Default to Owner. The Mortgagee shall have the right, but not the obligation,

to cure the Default during a period beginning upon the Mortgagee's receipt of that copy of the notice of Default and ending thirty (30) business days later (for monetary defaults) or sixty (60) business days later (for non-monetary defaults). If the nature of the alleged Default is such that it cannot reasonably be cured within the applicable cure period, the Mortgagee shall have the right, but not the obligation, to complete the cure of the Default if it has commenced efforts to cure the Default within the applicable cure period and continues to diligently pursue completion of the cure.

13.2.3 Except as otherwise provided within this Agreement, any Mortgagee who comes into possession of some or all of the Property pursuant to foreclosure of a mortgage or deed of trust, or deed in lieu of such foreclosure or otherwise, shall:

13.2.3.1 Take that property subject to the terms of this Agreement and as Owner's successor;

13.2.3.2 Have the rights and obligations of an Assignee as set forth in Sections 13.3 and 13.4;

13.2.3.3 Have the right to rely on the provisions of Section 8 of this Agreement, provided that any development proposed by the Mortgagee is in substantial conformance with the terms of this Agreement; and

13.2.3.4 Not be liable for any Defaults, whether Major or Minor, or monetary obligations of Owner arising prior to acquisition of title to the Property by the Mortgagee, except that the Mortgagee may not pursue development pursuant to this Agreement until all delinquent and current fees and other monetary obligations then due under this Agreement for the portions of the Property acquired by the Mortgagee have been paid to City; and

13.2.3.5 Enjoy all rights conferred upon Owner under this Agreement, including those set forth in Section 13.3 below.

13.3 Transfer or Assignment. Subject to Section 13.5, Owner shall have the right to sell, transfer, assign, or otherwise convey its rights and obligations under this Agreement (collectively, an "Assignment of Rights and Obligations") in connection with the sale, transfer, assignment, or other conveyance of Owner's interest in some or all of the Property (an "Assignment of

Property").[31] Any Assignment of Rights and Obligations shall be (1) made together with an Assignment of Property, (2) apply to the property interest conveyed by the Assignment of Property (the "Transferred Property"),and (3) be memorialized in an Assignment and Assumption Agreement in a form substantially similar to Exhibit D, executed by the purchaser, transferee, or assignee (collectively, the "Assignee") to expressly and unconditionally assume all duties and obligations of Owner under this Agreement remaining to be performed with respect to the Transferred Property at the time of the Assignment. All Assignment and Assumption Agreements shall be recorded against the Transferred Property.

Within fifteen (15) business days after any Assignment, Owner shall notify City in writing of the Assignment and provide City with a copy of the Assignment and Assumption Agreement showing recordation against the Transferred Property.

Any City Facilities Fee Credit, Sports Park Fee Credit, FCPP Fee credit, other credit toward any other Development Impact Fee, or any right to reimbursement set forth in this Agreement which is possessed by Owner at the time of an Assignment shall remain in Owner's possession after the Assignment, unless the Assignment and Assumption Agreement expressly allocates some or all of a fee credit or right to reimbursement to the Assignee.

13.4 Effect of Assignment. Subject to Section 13.5 and unless otherwise stated within the Assignment, upon an Assignment:

13.4.1 The Assignee shall be liable for the performance of all obligations of Owner with respect to Transferred Property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

13.4.2 The owner of the Retained Property shall be liable for the performance of all obligations of Owner with respect to Retained Property, but shall have no further obligations with respect to the Transferred Property.

13.4.3 The Assignee's exercise, use, and enjoyment of the Transferred Property shall be subject to the terms of this Agreement to the same extent as if the Assignee were the Owner.

13.5 City's Consent. The City's consent shall not be required to an Assignment unless, at the time of the Assignment, Owner has been determined to be in Major Default pursuant to Section 12 and the Major Default has not been

[31] The Assignment of Rights and Obligations and the Assignment of Property for will be jointly referred to as an "Assignment."

cured. If Owner is in Major Default, City shall consent to any Assignment which provides adequate security to City, in the reasonable exercise of City's discretion, to guarantee the cure of that Major Default as it pertains to the Transferred Property upon completion of the Assignment.

14. MISCELLANEOUS PROVISIONS.

14.1 Rules of Construction. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

14.2 Entire Agreement. This Agreement constitutes the entire understanding and agreement of City and Owner with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between City and Owner respecting the subject matter of this Agreement including, without limitation, the Original City Agreement. Each of the Parties has been represented by legal counsel in the negotiation of this Agreement. Each of the Parties relies solely upon its own judgment and the advice of its counsel in interpreting the provisions of this Agreement and is not relying on any representation, interpretation, presumed assent, or implied agreement of the other Party which is not expressly contained in this Agreement.

14.3 Recorded Statement Upon Termination. Upon the completion of performance of this Agreement or its cancellation or termination, a statement evidencing completion, cancellation, or termination shall be promptly signed by the appropriate agents of City and Owner and shall be recorded in the Official Records of Orange County, California.

14.4 Project as a Private Undertaking. It is specifically understood by City and Owner that (i) the Project is a private development; (ii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property unless City accepts the improvements pursuant to the provisions of this Agreement or in connection with subdivision map approvals; and (iii) Owner shall have the full power and exclusive control of the Property, subject to the obligations of Owner set forth in this Agreement.

14.5 Incorporation of Recitals. Each of the Recitals set forth at the beginning of this Agreement are part of this Agreement.

14.6 Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction, or meaning of any of the provisions of this Agreement.

14.7 Consent. Where the consent or approval of City or Owner is needed to implement Development under this Agreement, the consent or approval shall not be unreasonably withheld, delayed, or conditioned, except where this Agreement expressly authorizes a Party to act in its sole discretion.

14.8 Covenant of Cooperation. City and Owner shall cooperate and deal with each other in good faith and assist each other in the performance of the provisions of this Agreement. Such cooperation shall include entering into Implementing Agreements to implement the obligations established in this Agreement.

14.9 Execution and Recording. The City Clerk shall cause a copy of this Agreement to be signed by the appropriate representatives of the City and recorded with the Office of the County Recorder of Orange County, California, within ten (10) days following the Effective Date. The signing of this Agreement by the City shall be deemed a ministerial act and the failure of the City to sign and/or record this Agreement shall neither alter the Effective Date nor affect the validity of and binding obligations set forth within this Agreement.

14.10 Delay for Events Beyond the Parties' Control. Performance by either Party of its obligations under this Agreement shall be excused, and the Term shall be extended, for periods equal to the cumulative time during which:

(1) Litigation, including appeals, is pending which challenges any matter, including compliance with CEQA or any other local, state, or federal law, related in any way to the approval or implementation of all or any part of the Development Plan. Any such extension shall be equal to the time between the filing of litigation, on the one hand, and the entry of final judgment or dismissal after the conclusion of all appeals and/or the expiration of all time periods during which an appeal could be brought, on the other.

OR

(2) Any application by Owner for County, state or federal regulatory permits and/or approvals required for the Project has been pending more than one year after its submittal.

OR

(3) A delay is caused by reason of any event beyond the control of City or Owner which prevents or delays performance by City or Owner of obligations under this Agreement. Such events shall include, by way of example and not limitation, acts of nature, enactment of new conflicting federal or state laws or regulations (example: listing of a species as threatened or endangered), need for compliance with local, state, or federal environmental laws (such as actions required as the result of the discovery of archaeological or paleontological artifacts during the course of Development), judicial actions such as the issuance of restraining orders and injunctions, delay in the issuance of bonds or formation of any Financing Districts, the bankruptcy or insolvency of construction contractors necessitating the hiring of replacement

contractor(s), and riots, strikes, or damage to work in process by reason of fire, mud, rain, floods, earthquake, or other such casualties.

If City or Owner seeks excuse from performance based upon this Section 14.10, it shall provide written notice of such delay to the other within thirty (30) days of the commencement of such delay. If the delay or Default, whether a Major Default or a Minor Default, is beyond the control of City or Owner it shall be excused, and an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon. Any disagreement between the Parties with respect to whether this Section 14.10 applies to a particular delay or Default is subject to the filing by either Party of an action for judicial review of the matter, including requests for declaratory and/or injunctive relief.

14.11 Interpretation and Governing Law. In any dispute regarding this Agreement, the Agreement shall be governed and interpreted in accordance with the laws of the State of California. Venue for any litigation concerning this Agreement shall be in Orange County, California.

14.12 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

14.13 Estoppel Certificate. Within ten (10) business days following a written request by either of the Parties, the other Party shall execute and deliver to the requesting Party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured Major Defaults or that the responding Party alleges that specified (date and nature) Major Defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall create a conclusive presumption that, except as may be represented by the requesting Party, this Agreement is in full force and effect without modification and that there are no uncured Major Defaults in the performance of the requesting Party. Owner shall pay City's reasonable administrative costs in connection with the issuance of such certificates under this Section prior to City's issuance of such certificates.

14.14 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

14.15 Future Litigation Expenses.

14.15.1 *Payment to Prevailing Party.* If either Party brings a legal or equitable proceeding against the other Party which arises in any way out of this Agreement, the prevailing Party shall be entitled to

recover its reasonable attorneys' fees and all other reasonable costs and expenses incurred in that proceeding.

14.15.2 *Scope of Fees.* Attorneys' fees under this Section shall also include attorneys' fees on any appeal and in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the termination of this Agreement.

14.15.3 *Limitation of Liability.* Owner's obligations under this Agreement are solely those of Owner. In no event shall any present, past or future officer, director, shareholder, member, employee, partner, trustee, affiliate, manager, representative or agent of Owner (a "Related Party") have any personal liability, directly or indirectly, under this Agreement. Recourse in any way connected with or arising from this Agreement shall not be available against any Related Party.

The terms of this Section 14.15 are, by their very nature, intended to survive the termination of this Agreement.

14.16 Prior Parkland Option. Under the Original City Agreement, Owner granted City an option to purchase up to eighteen (18) acres for a site for a sports park (the "Parkland Option"). Since February 2006, the Parties have been in disagreement over the legal status of and their respective rights under the Parkland Option. Outside this Agreement, the Parties have reserved certain rights pertaining to the Parkland Option. The Parties agree that, irrespective of the actual legal status of and their respective rights under the Parkland Option prior to entering into this Agreement, by entering into this Agreement their issues with respect to the Parkland Option shall be deemed forever resolved, the Parkland Option shall no longer exist, all claims with respect to the Parkland Option shall be deemed terminated, and neither Party shall initiate, maintain, continue, or again assert any claim with respect to the Parkland Option, including, but not limited to, attorneys fees, costs, and staff and administrative expenses incurred in connection with the prior disagreement over the Parkland Option.

14.17 Date of Execution. Owner and City have executed this Agreement on the dates set forth below.

CITY

City of Lake Forest

By: _____
Peter Herzog

Mayor

Date: 10-19-2010

ATTEST:

By: _____
Stephanie Smith
City Clerk

OWNER

SHEA/BAKER RANCH ASSOCIATES, LLC,
a California limited liability company

By: SHEA BAKER RANCH, LLC
a California limited liability company
Its Managing Member

By: J.F. SHEA CO. INC.,
A Nevada Corporation
Its Managing Member

By: _____
Its: Vice President
Date: October 19, 2010

By: _____
Its: Vice President
Date: Oct 19 2010